IOWA ADMINISTRATIVE BULLETIN

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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Iowa Administrative Bulletin

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Iowa Administrative Code

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Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - $1,350

(Price includes complete set of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders may be purchased for $14.)

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(Subscription expires June 30, 2004)

All checks should be made payable to the Treasurer, State of Iowa. Send all inquiries and subscription orders to:

Attn: Stephanie Cox
Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

Schedule for Rule Making
2003

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
5	**Friday, August 15, 2003**	**September 3, 2003**
6	**Friday, August 29, 2003**	**September 17, 2003**
7	**Friday, September 12, 2003**	**October 1, 2003**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

To All Agencies:
The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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Customer councils, ch 10 IAB 7/23/03 **ARC 2637B** (See also **ARC 2635B**)	Director's Conference Room, Level A Hoover State Office Bldg. Des Moines, Iowa	August 13, 2003 11 a.m.
CREDIT UNION DIVISION[189]		
Procedure for adoption of rules, ch 4 IAB 8/6/03 **ARC 2679B**	Conference Room, Suite 370 200 E. Grand Des Moines, Iowa	August 26, 2003 2:30 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Value-added agricultural products and processes financial assistance program, amendments to ch 57 IAB 8/6/03 **ARC 2674B**	Second Floor Northwest Conference Rm. 200 E. Grand Des Moines, Iowa	August 27, 2003 1 p.m.
New jobs and income program, amendments to ch 58 IAB 8/6/03 **ARC 2675B**	Main Conference Room 200 E. Grand Des Moines, Iowa	August 27, 2003 2 to 3 p.m.
New capital investment program, ch 64 IAB 8/6/03 **ARC 2676B**	Main Conference Room 200 E. Grand Des Moines, Iowa	August 27, 2003 3 to 4 p.m.
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Endorsement for PK-12 principal and PK-12 supervisor of special education, 14.142(1), 14.142(2) IAB 8/6/03 **ARC 2669B**	Room 2 South Grimes State Office Bldg. Des Moines, Iowa	September 9, 2003 3 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Open burning, 23.2 IAB 7/9/03 **ARC 2597B**	Conference Rooms 2 and 3 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	August 7, 2003 1 p.m.
INSURANCE DIVISION[191]		
HMOs—deductibles and coinsurance charges, 40.16 IAB 7/23/03 **ARC 2631B**	330 Maple St. Des Moines, Iowa	August 12, 2003 10 a.m.

MANAGEMENT DEPARTMENT[541]

Grants enterprise management system, ch 11 IAB 7/9/03 **ARC 2587B** (See also **ARC 2602B**)	Room G14 State Capitol Des Moines, Iowa	August 7, 2003 10 a.m.

MEDICAL EXAMINERS BOARD[653]

Fees for permanent physician licenses, 8.4(1), 9.11(3), 9.13(1) IAB 7/23/03 **ARC 2638B**	Suite C 400 SW Eighth St. Des Moines, Iowa	August 12, 2003 3 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Practice of chiropractic physicians, 43.1, 43.3 to 43.6, 44.3(2) IAB 7/23/03 **ARC 2629B**	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 13, 2003 9 to 11 a.m.
Administration of conscious sedation by podiatrists, 222.3(2), 223.1 to 223.4 IAB 8/6/03 **ARC 2672B**	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 26, 2003 9 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Birth defects institute, 4.2, 4.3, 4.6 IAB 8/6/03 **ARC 2683B** **(ICN Network)**	ICN Conference Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	August 26, 2003 11 a.m. to 12 noon
	Kimberly Center 1002 W. Kimberly Davenport, Iowa	August 26, 2003 11 a.m. to 12 noon
	Clear Creek-Amana High School 311 W. Marengo Rd. Tiffin, Iowa	August 26, 2003 11 a.m. to 12 noon
Immunization requirements for attendance at elementary or secondary schools or licensed child care centers, 7.1 to 7.11 IAB 8/6/03 **ARC 2684B**	Conference Room 518, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa	August 26, 2003 8:30 to 10:30 a.m.
Varicella vaccine required for enrollees in child care centers and schools, 7.4 IAB 8/6/03 **ARC 2653B** (See also **ARC 2652B** herein)	Conference Room 518, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa	August 26, 2003 8:30 to 10:30 a.m.

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Reduction of license fees, 9.1 IAB 8/6/03 **ARC 2673B**	Second Floor Conference Room 1920 SE Hulsizer Ankeny, Iowa	August 26, 2003 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Utility accommodation, ch 115 IAB 8/6/03 **ARC 2662B**	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	August 28, 2003 10 a.m. (If requested)

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Intrastate access service charges, 22.14(2) IAB 8/6/03 **ARC 2680B**	Hearing Room 350 Maple St. Des Moines, Iowa	September 23, 2003 10 a.m.
Iowa broadband initiative, ch 43 IAB 7/23/03 **ARC 2620B**	Hearing Room 350 Maple St. Des Moines, Iowa	October 21, 2003 10 a.m.

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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  - Engineering and Land Surveying Examining Board[193C]
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ARC 2679B

CREDIT UNION DIVISION[189]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b.*"

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 533.54, the Credit Union Review Board hereby gives Notice of Intended Action to rescind Chapter 4, "Procedure for Adoption of Rules," Iowa Administrative Code, and to adopt a new Chapter 4 with the same title.

The rules in Chapter 4 describe the procedures for adoption of rules. The proposed amendment is made pursuant to Executive Order 8, and the rules are based on the uniform rules and Iowa Code chapter 17A.

Any interested person may make written or electronic suggestions or comments on this proposed amendment on or before August 26, 2003. Such written material should be directed to James Forney, Credit Union Division, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309; fax (515)281- 7595; E-mail James.Forney@iacudiv.state.ia.us.

There will be a public hearing on the proposed amendment at 2:30 p.m. on August 26, 2003, in the Credit Union Division Conference Room, 200 East Grand Avenue, Suite 370, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs should contact the Credit Union Division prior to the hearing if accommodations need to be made.

This amendment is intended to implement Iowa Code section 17A.4.

The following amendment is proposed.

Rescind 189—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
PROCEDURE FOR ADOPTION OF RULES

189—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the credit union division are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

189—4.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the credit union division may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"a," solicit comments from the public on a subject matter of possible rule making by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

189—4.3(17A) Public rule-making docket.

4.3(1) Docket maintained. The agency shall maintain a current public rule-making docket.

4.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"a," the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

4.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication in the Iowa Administrative Bulletin to the time it is terminated or the rule becomes effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule;

b. A citation to all published notices relating to the proceeding;

c. Where written submissions on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected and where and when oral presentations may be made;

f. Whether a written request for issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis or statement may be inspected;

g. The current status of the proposed rule;

h. Any known timetable for division decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The dates of the rule's filing and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

189—4.4(17A) Notice of proposed rule making.

4.4(1) Contents. At least 35 days before adoption of a rule the credit union division shall publish Notice of Intended Action in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may request an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the credit union division shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the division for the resolution of each of those issues.

4.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with subrule 4.12(2).

4.4(3) Copies of notices. Persons desiring copies of future Notices of Intended Action by subscription must file with the credit union division at the address disclosed in 189—subrule 1.3(1) a written request indicating the name and address to which such Notices of Intended Action should be sent. The request shall specify whether the person wants to receive credit union rules as defined by rule 189—1.4(17A,533). Within seven days after submission of a Notice of Intended Action for publication, the division shall mail or otherwise transmit a copy of that notice to subscribers who have filed a written request.

189—4.5(17A) Public participation.

4.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the credit union division or the person designated in the Notice of Intended Action, at the address disclosed in 189—subrule 1.3(1).

4.5(2) Oral proceedings. The credit union division may, at any time, schedule an oral proceeding on a proposed rule. The division shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the division by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following:

a. A request by one or more individual persons must be signed by each person and include the address and telephone number of each person;

b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request; and

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

d. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

4.5(3) Conduct of oral proceedings.

a. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)"b" or this chapter.

b. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. The superintendent, or another person designated by the superintendent who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

d. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the division at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the credit union division.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submission made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentation.

4.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the credit union division may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

4.5(5) Accessibility. The credit union division shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the division at (515)281-6514 in advance to arrange access or other needed services.

189—4.6(17A) Regulatory analysis.

4.6(1) Definition of small business. A "small business" is defined in Iowa Code section 17A.4A(7).

4.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the credit union division's small business impact list by making a written application to the division at the address disclosed in 189—subrule 1.3(1). The application for registration shall state:

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a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization; an organization representing 25 or more persons who each qualify as a small business shall indicate that fact; and

e. Whether the applicant desires copies of Notices of Intended Action, for a reasonable cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The credit union division may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The division may periodically send a letter to each registered small business or organization, or organization of small businesses, asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

4.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the credit union division shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. For a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the division shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

4.6(4) Qualified requesters for regulatory analysis—economic impact. The credit union division shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a), after a proper request from:

a. The administrative rules review committee; or

b. The administrative rules coordinator.

4.6(5) Qualified requesters for regulatory analysis—business impact. The credit union division shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b), after a proper request from:

a. The administrative rules review committee;

b. The administrative rules coordinator;

c. At least 25 or more persons who sign the request provided that each represents a different small business; or

d. An organization representing at least 25 small businesses. The request shall list the name, address, and telephone number of not less than 25 small businesses it represents.

4.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis the credit union division shall adhere to the time lines described in Iowa Code section 17A.4A(4).

4.6(7) Contents of request. A request for a regulatory analysis is made when it is received by the division, at the address disclosed in 189—subrule 1.3(1). The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

4.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4,5).

4.6(9) Publication of a concise summary. The credit union division shall make available, to the extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

4.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2a), unless a written request expressly waives one or more of the items listed in that section.

4.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, and, if the credit union division determines that the rule would have a substantial impact on small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).

189—4.7(17A,25B) Fiscal impact statement.

4.7(1) A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

4.7(2) If the credit union division determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the division shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

189—4.8(17A) Time and manner of rule adoption.

4.8(1) Time of adoption. The credit union division shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the credit union division shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

4.8(2) Consideration of public comment. Before the adoption of a rule, the credit union division shall fully consider all of the written and oral submissions received in that rule-making proceeding and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

4.8(3) Reliance on agency expertise. Except as otherwise provided by law, the credit union division may use its own experience, technical competence, specialized knowledge and judgment in the adoption of a rule.

189—4.9(17A) Variance between adopted rule and rule proposed in Notice of Intended Action. The credit union division shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action upon which the rule is based unless:

1. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

2. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

3. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

189—4.10(17A) Exemptions from public rule-making procedures.

4.10(1) Omission of notice and comment. To the extent the credit union division for good cause finds that public notice and participation are unnecessary, impracticable or contrary to the public interest in the process of adopting a particular rule, the division may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The division shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.10(2) Categories exempt. The credit union division may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 4.10(1).

189—4.11(17A) Concise statement of reasons.

4.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the credit union division shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and shall be delivered to the division at the address disclosed in 189—subrule 1.3(1). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

4.11(2) Contents. The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any changes between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change; and

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the credit union division's reasons for overruling the arguments made against the rule.

4.11(3) Time of issuance. After a proper request, the credit union division shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

189—4.12(17A) Contents, style, and form of rule.

4.12(1) Contents. Each rule adopted by the credit union division shall contain the text of the rule and, in addition:

a. The date the division adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1), or the credit union division in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1), or the credit union division in its discretion decides to include such reasons; and

g. The effective date of the rule.

4.12(2) Incorporation by reference. The credit union division may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the division finds that the incorporation of its text in the division's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The division may incorporate such matter by reference in a proposed or adopted rule only if the division makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this division, and how and where copies may be obtained from the division of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The division shall retain permanently a copy of any materials incorporated by reference in a rule of the division.

If the division adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

4.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the division shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the division. The division will provide a copy of that full text for a reasonable charge upon request, shall make copies of the full text available for review at the state law library, and may make the standards available electronically.

At the request of the administrative code editor, the division shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

4.12(4) Style and form. In preparing its rules, the division shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

189—4.13(17A) Agency rule-making record.

4.13(1) Requirement. The credit union division shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

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4.13(2) Contents. The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of division submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the division's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the division, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the division, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the division is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the division shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general;

j. A copy of any significant written criticism of the rule, including a summary of any petition for waiver of the rule; and

k. A copy of any executive order concerning the rule.

4.13(3) Effect of record. Except as otherwise required by a provision of law, the rule-making record required by this rule need not constitute the exclusive basis for division action on that rule.

4.13(4) Maintenance of record. The credit union division shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 4.13(2)"g," "h," "i," or "j."

189—4.14(17A) Filing of rules. The credit union division shall file each rule it adopts with the administrative rules coordinator. The filing must be executed as soon after adopting the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued for that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until after the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the division shall use the standard form prescribed by the administrative rules coordinator.

189—4.15(17A) Effectiveness of rules prior to publication.

4.15(1) Grounds. The credit union division may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if the division finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The division shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.15(2) Special notice. When the credit union makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), the division shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the division to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the division of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

189—4.16(17A) General statements of policy.

4.16(1) Compilation, indexing, public inspection. The credit union division shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)"a," "c," "f," "g," "h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

4.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this subsection shall not be relied on by the credit union division to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

189—4.17(17A) Review of rules by division.

4.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the credit union division to conduct a formal review of an existing rule. Upon approval of that request by the administrative rules coordinator, the division shall conduct a formal review of a specified

rule to determine whether a new rule should be adopted or whether the rule should be amended or repealed. The division may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

4.17(2) In conducting the formal review, the credit union division shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall comply with Iowa Code section 17A.7(2). A copy of the division's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection at the division at the address disclosed in 189—subrule 1.3(1).

These rules are intended to implement Iowa Code section 17A.4.

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program (VAAPFAP)," Iowa Administrative Code.

The proposed amendments incorporate legislative revisions to the VAAPFAP Program in accordance with 2003 Iowa Acts, House File 692, section 87.

Item 1 of the proposed amendments adds definitions of "agricultural biomass industry," "agricultural biotechnology industry," "alternative energy industry," "organic products," and "producer-owned, value-added business."

Item 2 expands the number of program components to include agricultural business facilities in the biotechnology industry, agricultural biomass industry and alternative energy industry, and facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets.

Item 3 removes the fixed calculation by which the amount of an award is determined.

Item 4 includes a provision to notify the public that the Department will consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry.

Item 5 proposes revisions to the evaluation and rating criteria.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 27, 2003. Interested persons may submit written or oral comments by contacting Paul Stueckradt, Program Manager, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4897; E-mail address paul.stueckradt@ided.state.ia.us.

A public hearing to receive comments about the proposed amendments will be held on August 27, 2003, at 1 p.m. at the above address in the second floor northwest conference room.

These amendments are intended to implement Iowa Code section 15E.111 as amended by 2003 Iowa Acts, House File 692, section 87.

The following amendments are proposed.

ITEM 1. Amend rule **261—57.2(15E)** by adopting the following **new** definitions in alphabetical order:

"Agricultural biomass industry" means businesses that utilize agricultural commodity crops, agricultural by-products, or animal feedstock in the production of chemicals, protein products, or other high-value products.

"Agricultural biotechnology industry" means businesses that utilize scientifically enhanced plants or animals that can be raised by producers and used in the production of high-value products.

"Alternative energy industry" includes businesses involved in the production of ethanol, including gasoline with a mixture of 70 percent or more ethanol, biodiesel, biomass, hydrogen, or in the production of wind energy.

"Organic products" means Iowa-grown or Iowa-raised agricultural products as defined by 21—Chapter 47, Iowa Organic Program.

"Producer-owned, valued-added business" means a person who holds an equity interest in the agricultural business and is personally involved in the production of crops or livestock on a regular, continuous, and substantial basis.

ITEM 2. Amend rule 261—57.4(15E) as follows:

261—57.4(15E) Program components and eligibility requirements.

~~**57.4(1)** Program components.~~ There will be ~~three~~ *six* components to the VAAPFAP program. *For program components described in subrules 57.4(1) through 57.4(4), the department shall prefer producer-owned, value-added businesses, education of producers and management boards in value-added businesses, and other activities that would support the infrastructure in the development of value-added agriculture, and public and private joint ventures involving an institution of higher learning under the control of the state board of regents or a private college or university to acquire assets, research facilities, and leverage moneys in a manner that meets the goals of the grow Iowa values fund.* The ~~first component relates to operations which are involved in the development of new and innovative products or processes related to agriculture and is referred to as the "Innovative Agricultural Products and Processes Component." The second component relates to renewable fuel production facilities and is referred to as the "Renewable Fuel Component." The third component relates to the encouragement and creation of business partnerships or networks working on ideas for new agricultural products or processes and is referred to as the "Project Creation Component." Funds available for project awards will be allocated on the basis of 40 percent (component 1), 40 percent (component 2), and 20 percent (component 3) until the end of the third quarter of the state fiscal year, after which no restrictions would apply.~~ *component(s) include the following:*

57.4(~~2~~) ***(1)*** Innovative agricultural products and processes component. An application based on this component shall be considered if either of the following ~~apply~~ *applies*:

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a. The business will produce a product derived from an agricultural commodity, if the product is not commonly produced in Iowa from an agricultural commodity; or

b. The business will utilize a process to produce a product derived from an agricultural commodity, if the process is not commonly used in Iowa to produce the product.

~~c.~~ For purposes of this ~~section~~ *subrule*, a product is "not commonly produced" and a process is "not commonly used" if the product or process is not usually, generally, or ordinarily produced or processed in Iowa.

57.4~~(3)~~ ***(2)*** Renewable fuel component. Applications for renewable fuel and ethanol production shall be considered by the department for funding. Applications based on ethanol fuel production must meet the following criteria to be considered for funding:

a. All fermentation, distillation, and dehydration of the ethanol occurs at the proposed facility.

b. The ethanol produced at the proposed facility is at least 190 proof and is denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner produces at least 190 proof ethanol from the ethanol purchased from the facility.

57.4(3) *Agricultural biotechnology, biomass and alternative energy component. Agricultural business facilities in the agricultural biotechnology industry, agricultural biomass industry, and alternative energy industry are eligible to submit applications.*

57.4(4) *Organic and emerging markets component. Facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets are eligible for program assistance.*

57.4~~(4)~~ ***(5)*** Project development assistance. The department, at its discretion, may also provide funding for project development related to proposed projects under this program. Project development assistance could be for the purpose of assisting in departmental evaluation of proposals, or could be one of the proposed activities in a funding request whose further project development could reasonably be expected to lead to a VAAPFAP-eligible commercial enterprise. Feasibility studies and basic research are not eligible for assistance under this program.

57.4~~(5)~~ ***(6)*** Project creation assistance. This component is for projects that eventually could be eligible for funding within the other VAAPFAP components. Periodically, a request for proposal (RFP) will be issued based on strategic initiatives developed by the department in consultation with relevant agricultural groups and advisors. The RFP will describe the desired outcome of the proposed effort. The desired outcome could be a new and innovative product, new processing or marketing techniques, or new forms of business operation or collaboration. These efforts could include:

a. Projects that can show need for special financial assistance to engage participation of expertise needed from sources external to the business sponsor of the project.

b. Endeavors where there is a need for financial assistance to plan and organize business consortia or joint ventures among firms or to support costs of special services to be acquired from university or other sources.

c. Situations where there is a need to provide matching funds to businesses to enter competition for federal research and development grants.

ITEM 3. Amend rule 261—57.6(15E) as follows:

261—57.6(15E) Awards.

57.6(1) Form. Financial assistance awarded under this program may be in the form of a loan, forgivable loan, deferred loan, grant, ~~production incentive payment,~~ or a combination thereof. The department shall not award more than 25 percent of the amount allocated to the value-added agricultural products and processes financial assistance fund during any state fiscal year to support a single person. The department may finance any size of facility. However, the department ~~shall~~ *may* reserve up to 50 percent of the total amount allocated to the fund~~,~~ for purposes of assisting persons requiring ~~$100,000~~ *$500,000* or less in financial assistance. The amount shall be reserved until the end of the third quarter of the state fiscal year and may then become available for other projects.

57.6(2) Amount.

a. Grants, forgivable loans, and loans shall be awarded on the basis ~~of the following:~~ *of the impact of the project and the degree to which the project meets the goals of the program.*

~~Total Amount of Award~~	~~Loan %~~	~~Grant or Forgivable Loan %~~
~~$0 to 20,000~~	~~0%~~	~~100%~~
~~$20,001 to 150,000~~	~~50%~~	~~50%~~
~~$150,001 to 250,000~~	~~60%~~	~~40%~~
~~$250,001 to 350,000~~	~~70%~~	~~30%~~
~~$350,001 to 450,000~~	~~80%~~	~~20%~~
~~$450,001 and above~~	~~100%~~	~~0%~~

b. The department reserves the right to ~~provide a higher percentage of loan than indicated above. A higher percentage of grant or forgivable loan may be provided if the business can support its request with documentation that the project would not be able to proceed without a higher ratio of grant or forgivable loan funds or if the project is a strategic initiative established according to subrule 57.4(5).~~ *negotiate the amount, term payback amount, and other conditions of an award.*

57.6(3) ~~Loan rate and terms. Rescinded IAB 10/18/00, effective 11/22/00.~~

ITEM 4. Amend rule 261—57.8(15E) as follows:

261—57.8(15E) Review process. Subject to availability of funds, applications are reviewed and rated by IDED staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. *If the applicant had previously consulted with the coordinator in completion of the application,* ~~The~~ *the* department may refer an application to the coordinator for further feasibility studies if deemed necessary~~, if the applicant had previously consulted with the coordinator in completion of the application~~. Notice of such referral shall simultaneously be mailed to the applicant. The IDED staff may refer viable applications for project development assistance. The applicant shall then have three weeks from the date of the IDED letter to submit the requested information. Applications will also be reviewed by the agricultural products advisory council on a regular basis. Recommendations from the IDED staff will be submitted to the director of the department for final approval, denial or deferral. Applicants shall be notified in writing within one week following the department's final action.

The department may consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry.

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The department reserves the right to informally consult with external resources to assist in the evaluation of projects or to contract with outside consultants for the same purpose in an amount not to exceed $20,000 per project.

ITEM 5. Amend rule 261—57.10(15E) as follows:

261—57.10(15E) Evaluation and rating criteria. The IDED staff shall evaluate and rank applications based on the following criteria:

57.10(1) For the innovative products and processes component:

a. Feasibility *(0-25 points)*. The feasibility of the existing or proposed facility, process, or operation to remain a viable enterprise ~~(0-25 pts.)~~. Rating factors for this criterion include, but are not limited to, the following: initial capitalization, project budget, financial projections, marketing analysis, marketing plan, management team, and production plan. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

~~b. New or innovative. The degree to which the proposed product or process is new and innovative. This includes, but is not limited to, consideration of the degree to which the product or process is commonly produced or commonly used within the state (0-25 pts.). In order to be eligible for funding, proposals must score at least 15 points on this rating factor.~~

b. Priority components (0-25 points). The degree to which the proposed project meets one of the four primary program components which include:

(1) Innovative agricultural products and processes.

(2) Renewable fuels.

(3) Agricultural biotechnology, agricultural biomass, and alternative energy.

(4) Organic products and emerging markets.

In order to be eligible for funding, proposals must score at least 15 points in the program component under which the applicant is eligible.

c. Utilization *(0-25 points)*. The degree to which the facility will add value to and increase the utilization of agricultural commodities produced in this state ~~(0-25 pts.)~~. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

d. Producer ownership (0-15 points). The level of producer ownership will be given additional consideration.

~~d~~ *e*. The extent to which the existing or proposed facility is located in a rural region of the state (0-10 ~~pts.~~ *points*).

~~e~~ *f*. The proportion of local match to be contributed to the project (0-5 ~~pts.~~ *points*).

~~f~~ *g*. The level of need of the region where the existing facility is or the proposed facility is to be located (0-5 ~~pts.~~ *points*). More points are awarded to those projects which exhibit greater need as measured by factors including, but not limited to, the following: regional unemployment rate, poverty level, or other measures of regional fiscal distress.

~~g~~ *h*. The degree to which the facility produces a coproduct which is marketed in the same locality as the facility (0-5 ~~pts.~~ *points*).

A minimum score of 65 points is needed for a project to be recommended for funding.

~~**57.10(2)** For the renewable fuels component:~~

~~a. The department shall give priority to supporting proposed renewable fuel production facilities which directly support livestock production operations. The highest priority shall be provided to a renewable fuel production facility which produces coproducts which are used to produce livestock raised in the same locality as the production facility.~~

~~b. All renewable fuels projects will be rated based on the following:~~

~~(1) Feasibility (0-35 pts.).~~

~~(2) Increased utilization (0-35 pts.).~~

~~(3) Coproduct local market (0-10 pts.).~~

~~(4) Level of need (0-10 pts.).~~

~~(5) Rural region (0-5 pts.).~~

~~(6) Local match (0-5 pts.).~~

~~All those projects scoring 65 points or higher will be recommended for funding if sufficient funds are available. If insufficient funds are available, those projects rating 65 or higher and qualifying as "highest priority" projects under paragraph "a" of this subrule will be recommended prior to those which do not qualify as "highest priority" projects.~~

~~c. If the department has two or more proposals which are otherwise equal, a preference shall be given to those proposals in which the livestock operation:~~

~~(1) Is located in an agricultural area as provided in Iowa Code chapter 352, and~~

~~(2) Is located in close proximity to and is an integral part of the renewable fuel production facility. However, the owner of the facility is not required to hold an interest in the land on which the livestock are produced. The livestock may be produced under the terms of a contract, in which a person regularly engaged in livestock production provides for the care and feeding of the livestock on behalf of the facility's owner.~~

~~In ranking projects according to this paragraph "c," subparagraphs (1) and (2) above, first preference will be given to projects which meet both subparagraphs. Second preference will be given to projects that meet either subparagraph (1) or (2), and third preference will be given to those projects meeting neither criteria.~~

57.10~~(3)~~ ***(2)*** For the project creation assistance component:

a. Any person is eligible to apply except educational or research institutions. However, *an* educational ~~and~~ *or* research ~~institutions~~ *institution* may be a partner to an eligible applicant.

b. The evaluation process will focus on the application of new technology and knowledge to agricultural processing and will be based upon the degree to which:

(1) The resulting business has potential to increase the utilization of agricultural commodities in Iowa; and

(2) The resulting business increases value-added economic activities (for example, facilities or employment) within the state of Iowa.

ARC 2675B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 58,

"New Jobs and Income Program," Iowa Administrative Code.

The proposed amendments amend the definitions of "community" and "full-time"; limit the amount of investment (or insurance premium) tax credit an eligible business may receive to the amount that is stated in the agreement; address how extension requests will be handled for the exemption from land ownership restrictions for nonresident aliens; clarify when bonuses, commissions, and overtime pay may be used in wage calculations; implement the new waiver provisions; clarify when repayment of benefits would occur and how the repayment would be calculated; and address amendments to approved projects.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 27, 2003. Interested persons may submit written or oral comments by contacting Amy Johnson, Business Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4735.

A public hearing to receive comments about the proposed amendments will be held on August 27, 2003, from 2 to 3 p.m. at the above address in the main conference room. Individuals interested in providing comments at the hearing should contact Amy Johnson by 4 p.m. on August 26, 2003, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code chapter 15 as amended by 2003 Iowa Acts, House Files 612, 677, and 681.

The following amendments are proposed.

ITEM 1. Amend the definitions of "community" and "full-time" in rule **261—58.2(15)** as follows:

"Community" means a city, county, or an entity established pursuant to Iowa Code chapter 28E ~~that is a certified participant under Iowa Code section 15.308 (community builder program) or has established a comprehensive plan approved by the department~~.

"Full-time" or "full-time equivalent job" means the equivalent of employment of one person*:* ~~for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year.~~

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

ITEM 2. Amend paragraph **58.4(3)"a"** as follows:

a. Investment tax credit. An eligible business may claim an investment tax credit as provided in Iowa Code *(2003)* ~~Supplement~~ section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. If the business is a partnership, subchapter S corporation, limited liability company, *closed cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes,* or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. Subject to prior approval by the department in consultation with DRF, an eligible business whose project primarily involves the production of value-added agricultural products may elect to apply for a refund for all or a portion of an unused tax credit. For purposes of this subrule, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code ~~which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol~~. The refund may be used against a tax liability imposed for individual income tax, corporate income tax, or franchise tax. *The eligible business shall not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—58.11(15). An eligible business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.*

ITEM 3. Amend paragraph **58.4(3)"b"** as follows:

b. Insurance premium tax credit. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. *The eligible business shall not claim an insurance premium tax credit for capital expenditures above the amount stated in the agreement described in 261—58.11(15). An eligible business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.*

ITEM 4. Amend paragraph **58.4(3)"e"** as follows:

e. Refunds. An eligible business whose project primarily involves the production of value-added agricultural products and whose application was approved by the department on or after May 26, 2000, may elect to receive as a refund all or a portion of an unused investment tax credit.

(1) The department will determine whether a business's project primarily involves the production of value-added agricultural products. Effective July 1, 2001, an eligible business that elects to receive a refund shall apply to the department for a tax credit certificate.

(2) The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the United States Internal Revenue Code ~~that is not required to file an Iowa corporate income tax return~~, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.

(3) The department will make public by June 1 of each year the total number of requests for tax credit certificates

and the total amount of requested tax credit certificates that have been submitted. ~~By June 15 of each year any business that has submitted a request for a tax credit certificate for that year may be allowed to amend or withdraw any such request.~~ The department will issue tax credit certificates within a reasonable period of time.

(4) The department shall not issue tax credit certificates which total more than $4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of $4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an eligible business will be prorated based upon the total amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each eligible business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an eligible business submits a request in the amount of $1 million and the total amount of requested tax credit certificates equals $8 million, the business will be issued a tax credit certificate in the amount of $500,000:

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500{,}000$$

(5) Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code ~~which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol~~. For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates. Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until depleted, whichever occurs first.

(6) An eligible business may apply for tax credit certificates once each year for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. For example, an eligible business which completes a project in October 2001 and has an investment tax credit of $1 million may apply for a tax credit certificate in May 2002. If, because of the proration of the $4 million of available *refundable* credits for the fiscal year, the business is awarded a tax credit certificate in the amount of $300,000, the business may claim the $300,000 refund and carry forward the unused investment tax credit of $700,000 for up to seven years or until the credit is depleted, whichever occurs first.

ITEM 5. Amend paragraph **58.4(8)"a"** as follows:

a. An eligible business, if owned by nonresident aliens, may acquire and own up to 1,000 acres of land in the economic development area provided the eligible business is not actively engaged in farming within the economic development area. An eligible, nonresident alien-owned business may also lease up to an additional 280 acres of land in the economic development area. An eligible business owned by nonresident aliens may be allowed, before an application is submitted, to take out a purchase option on up to 1,000 acres the business intends to acquire and may be allowed to take out a lease option on up to an additional 280 acres. The purchase and lease options may be no longer than six months in duration, and the option acquired shall be contingent upon department approval of the business's NJIP application. The eligible business may receive one ~~year~~ or more ~~one-year~~ extensions of the five-year time limit for complying with requirements for the development of agricultural land as stated in Iowa Code section 567.4. *Requests for an extension must be made in writing and received by the community and the department 90 days prior to the expiration of the current time limit.* Each extension must be approved by the community prior to approval by the department. *An eligible business may receive one five-year extension and one or more one-year extensions. The community, in consultation with the department, will determine whether a five-year or one-year extension is granted.* The eligible business, if owned by nonresident aliens, must comply with all other provisions of Iowa Code chapter 567 which govern land ownership by nonresident aliens, provided they do not conflict with Iowa Code section 15.331B.

ITEM 6. Amend rule 261—58.7(15) as follows:

261—58.7(15) Eligibility requirements. Retail business shall not be eligible to receive benefits under this program. To be eligible for program participation a business shall meet all of the threshold requirements of subrule 58.7(1) and at least three of the elements listed in subrule 58.7(2). If an application is submitted by a group of businesses, the group must meet the ~~$10 million~~ capital investment requirement and the job creation requirement of at least 75 full-time *nonmanagement production* positions. Each business within the group shall individually meet the other eligibility criteria.

ITEM 7. Amend paragraph **58.7(1)"d"** as follows:

d. The business shall agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least $11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States Department of Commerce or 130 percent of the average wage in the county in which the community is located, whichever is higher. The business shall compute its median wage for all new full-time employees to include compensation in the form of hourly wages~~,~~ *and* salaries~~, bonuses, commissions and overtime pay~~. *Bonuses, commissions or overtime pay may also be included in the calculation if the business has a history of paying bonuses, commissions or overtime pay and will provide a guarantee that this type of additional compensation will continue while the business is participating in the program.*

ITEM 8. Amend paragraph **58.7(1)"f"** as follows:

f. The business shall agree to create at least 50, or the group of businesses at least 75, full-time *nonmanagement production* positions at a facility located in Iowa or expanded under the program for a specified period which will be negotiated with the department and the community, but which shall be a minimum of five years. The jobs must be created within five years of the application approval date and the jobs must be maintained for a period of at least five years from the date the business first meets its job creation obligation.

ITEM 9. Rescind subrule 58.7(4) and adopt in lieu thereof the following **new** subrule:

58.7(4) Waiver of program qualification requirements. A community may request a waiver of the requirement for the number of jobs listed in paragraph 58.7(1)"f." However, in no event shall the minimum number of jobs created be fewer than 15 full-time, nonmanagement production positions.

a. The department may grant a waiver only when good cause is shown.

(1) "Good cause shown" includes the following economic distress criteria:

1. A county family poverty rate higher than the state average.

2. A county unemployment rate higher than the state average.

3. A unique opportunity to use existing unutilized facilities in the community.

4. A significant downsizing or closure by one of the community's major employers.

5. An immediate threat posed to the community's workforce due to business downsizing or closure.

(2) "Good cause shown" may also include a proposed project by a business that shall meet all of the following criteria:

1. The business is in one of the state's targeted industry clusters: life sciences, information solutions, and advanced manufacturing.

2. The business will make a higher than average capital investment.

3. The business will pay an average starting wage for all the new jobs created as the result of the project that is significantly higher than the wage requirement in paragraph 58.7(1)"d."

b. A request for a waiver shall be made in writing on the form provided by the department. A request for a waiver shall be submitted with the application to request program benefits. The board will review the request for a waiver when it reviews the application and may approve, deny, or defer the request for a waiver. If the request for a waiver is approved, the board may proceed with its final decision on the application.

ITEM 10. Rescind rule 261—58.9(15) and adopt in lieu thereof the following **new** rule:

261—58.9(15) Application. The department shall develop a standardized application and make it available for use by a business applying for benefits and assistance. The community shall review the application to determine if the business is eligible for benefits and assistance. If the community determines that the business is eligible, it shall approve by resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. The community shall then submit the application for benefits and assistance to the department.

ITEM 11. Amend rule 261—58.14(15) as follows:

261—58.14(15) Repayment.

58.14(1) Failure to meet requirements. *If the department, in consultation with the community, determines that business has failed in any year to meet any one of the requirements of the new jobs and income Act, these rules, and the agreement, the business or group of businesses is subject to repayment of all or a portion of the amount of incentives received.* ~~If a business or group of businesses fails to meet any of its requirements under the agreement, the business or group of businesses shall repay to the local taxing authority and DRF the total value of the incentives received.~~

Once it has been established, through the compliance monitoring, audit or otherwise, that the business or group of businesses is required to repay all or a portion of the incentives received, DRF and the community, as appropriate, shall collect the amount owed. The community or DRF may exercise forbearance in connection with collection of the amounts owed to the community or DRF and elect, *in consultation with the department,* to grant the business or group of businesses a one-year period to meet its requirements under the agreement.

58.14(2) ~~Failure to meet job creation requirements.~~ *Calculation of repayment due.*

~~a. Repayment of property tax exemption. If a business or group of businesses has not met more than 90 percent of the job creation requirements of subrule 58.7(1), paragraph "f," it shall pay a percentage of the value of the incentive received for exemption from taxation for machinery, equipment and computers.~~

~~b~~ *a.* ~~Repayment of investment~~ *Investment* tax credit. ~~If a business or group of businesses has not met more than 90 percent of the job creation requirements of subrule 58.7(1), paragraph "f," and did not receive the exemption from taxation for machinery, equipment and computers incentive, it shall repay a percentage of the value of the exemption received.~~ *If a business does not meet the capital investment requirement, repayment shall be calculated as follows:*

(1) If the business has not met the minimum investment requirement as stated in 58.7(1)"e," the business shall repay all of the incentives and assistance that it has received.

(2) If the business has met 50 percent or less of the requirement, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

~~c. Calculation of repayment percentage. Repayment of the property tax exemption or the investment tax credit shall be calculated as follows:~~

b. Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment shall be calculated as follows:

(1) Fifty percent or less of job creation. If the business or group of businesses has met 50 percent or less of the requirement, the business or group of businesses shall pay the same percentage in benefits ~~as~~ *that* the business or group of businesses failed to create in jobs.

(2) More than 50 percent, less than 75 percent. If the business or group of businesses has met more than 50 percent but not more than 75 percent of the requirement, the business or group of businesses shall pay one-half of the percentage in benefits ~~as~~ *that* the business or group of businesses failed to create in jobs.

(3) More than 75 percent, less than 90 percent. If the business or group of businesses has met more than 75 percent but not more than 90 percent of the requirement, the business or group of businesses shall pay one-quarter of the percentage in benefits ~~as~~ *that* the business or group of businesses failed to create in jobs.

(4) If the business or group of businesses has not met the minimum job creation requirement as stated in paragraph 58.7(1)"f" or subrule 58.7(4), the business shall repay all of the incentives and assistance that it has received.

c. Wages and benefits. If the business or group of businesses fails to meet the wage requirement of paragraph 58.7(1)"d" or the benefits requirement of paragraph 58.7(1)"c" in any one year, the business or group of businesses must meet that requirement in the following year or

forfeit the incentives for the year in which the business was not in compliance.

d. Additional required elements. If the business or group of businesses fails to meet the additional required elements of subrule 58.7(2) in any one year, the business or group of businesses must meet that requirement in the following year or forfeit the incentives for the year in which the business was not in compliance.

~~**58.14(3)** Failure to meet other requirements. If the business or group of businesses fails to meet the wage requirement of subrule 58.7(1), paragraph "d," or any of the three criteria selected under subrule 58.7(2) in any one year, it must meet that requirement in the following year or forfeit the incentives for that year in which the business was not in compliance.~~

ITEM 12. Adopt **new** rule 261—58.15(15) as follows:

261—58.15(15) Amendments. Any substantive change to an approved project will be considered a contract amendment. The amendment must be requested on the form provided by the department and approved by the community. No amendment will be valid until approved by the department.

ITEM 13. Amend **261—Chapter 58**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 15 ~~and Iowa Code Supplement section 15.333~~ as amended by ~~2000 Iowa Acts, chapter 1213, section 1~~ *2003 Iowa Acts, House Files 612, 677 and 681*.

ARC 2676B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b.*"

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 64, "New Capital Investment Program," Iowa Administrative Code.

The proposed new rules implement the New Capital Investment Program (NCIP) as authorized by 2003 Iowa Acts, House File 677. The rules establish application procedures and evaluation criteria, detail the tax benefits available to approved businesses, and establish the contractual and compliance components of the program.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 27, 2003. Interested persons may submit written or oral comments by contacting Amy Johnson, Business Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4735.

A public hearing to receive comments about the proposed new chapter will be held on August 27, 2003, from 3 to 4 p.m. at the above address in the main conference room. Individuals interested in providing comments at the hearing should contact Amy Johnson by 4 p.m. on August 26, 2003, to be placed on the hearing agenda.

These rules are intended to implement 2003 Iowa Acts, House File 677.

The following **new** chapter is proposed.

CHAPTER 64
NEW CAPITAL INVESTMENT PROGRAM

261—64.1(80GA,HF677) Purpose. The purpose of the new capital investment program is to promote new economic development through new capital investments that upgrade and expand the capabilities of Iowa businesses by allowing the businesses to be more competitive in the world economy.

261—64.2(80GA,HF677) Definitions.

"Act" means 2003 Iowa Acts, House File 677.

"Average county wage" means the average wage the department calculates annually using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Biotechnology-related processes" means the use of cellular and biomolecular processes to solve problems or make products. Farming activities shall not be included for purposes of this definition.

"Capital investment" means:

1. The costs of manufacturing machinery and equipment and computers, as defined in Iowa Code section 427A.1(1)"e" and "j," which are purchased for use in the operation of the business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.
2. The cost of improvements made to real property that is used in the operation of the business.
3. The purchase price of real property and any existing buildings and structures located on the real property.

"Community" means a city, county, or other entity established pursuant to chapter 28E.

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Full-time" means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Job creation goal" means the number of new high-quality jobs that the business pledged to create in its application.

"Program" means the new capital investment program.

"Project" means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the program and for which the business requests benefits. A project may include the start-up, location or expansion of a business.

"Project completion" means the date of completion of all improvements necessary for the start-up, location, or expansion of the business within the community.

"Project initiation" means any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business's project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation.

"Retained jobs" means the full-time jobs that are at risk of being eliminated if the project does not proceed as planned.

"Tax credit certificate" means a document issued by the department to an approved business which indicates the amount of unused investment tax credit the business may receive in the form of a refund.

"Value-added agricultural products" means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—64.3(80GA,HF677) Applying for benefits.

64.3(1) Eligibility requirements. To be eligible to receive benefits under this program, a business shall meet all of the following requirements:

a. Business closures. The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

b. Retail businesses. The business is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

c. Capital investment. The business shall make a new capital investment of at least $1 million within three years of application approval.

d. Insurance benefits. The business shall provide comprehensive health benefits to all full-time employees. For purposes of this paragraph, comprehensive health benefits means a standard medical insurance plan provided by the business and of which the business pays 80 percent of the premiums for employee-only coverage and 50 percent of the premiums for family coverage. The department shall determine what constitutes a standard medical plan. Additional health benefits provided and paid for by the business may be considered in situations in which the business is paying a lesser percentage of the medical premiums. Additional health benefits include, but are not limited to, dental insurance, vision insurance and disability insurance.

e. Environmental or worker safety violations. The business has not, within the five years prior to the application date, violated state or federal environmental or worker safety statutes, rules or regulations. If such violations have occurred, the business must demonstrate that there were mitigating circumstances or that such violations did not seriously affect public health or safety or the environment. The business shall provide with the application an affidavit stating that this requirement has been met.

f. Project initiation. A business shall not be eligible for benefits under this program if the project for which it is requesting benefits has been initiated.

g. Violations of law. If the department finds that a business has a record of violations of law over a three-year period that tends to show a consistent pattern, the business shall not be eligible for benefits under this program. The time period that will be reviewed for violations of a federal or state environmental statute, regulation, or rule is the previous five years as required by Iowa Code section 15A.1(3)"a."

64.3(2) Application. The department shall develop a standardized application and make it available to a business applying for benefits. The application procedures are as follows:

a. Applications may be submitted at any time.

b. The community in which the business's project will be located shall review the application to determine whether the business is eligible for benefits. If the community determines that the business is eligible, it shall approve by resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. The community shall then submit the application for benefits to the department.

c. Each application received from a community will be reviewed by the department. The department may request additional information from the business applying for benefits or use other resources to obtain the needed information.

d. Department staff will rate applications according to the criteria in subrule 64.3(3). Department staff will present their recommendation and the application's rating to the director. The director will make the final decision to approve, defer, or deny the application.

e. Written notification of the director's decision will be sent to the business within two weeks of the date on which the decision was made.

64.3(3) Application rating system. Each application will be reviewed and rated using the following criteria:

a. Community and state impacts. Factors to be considered include, but are not limited to, the following:

(1) Impact of the proposed project on the community and the state.

(2) Local/regional community funding match.

(3) Impact on in-state competitors.

Maximum – 20 points.

b. Impact on current and new jobs. Factors to be considered include, but are not limited to, the following:

(1) Impact on the business's current employees, including the potential for increased skills and wages, as a result of this project.

(2) Total number of jobs to be created as the result of the project and the starting wages for these jobs.

(3) Number of high-quality jobs to be created. "High-quality jobs" means new full-time or new career-type positions that have a starting wage equal to or greater than the average county wage.

(4) Number of retained jobs.

(5) Other characteristics that contribute to the quality of jobs, including but not limited to turnover rate, safe working environment, and additional fringe benefits.

Maximum – 40 points.

c. Impact on the business. Factors to be considered include, but are not limited to, the following:

(1) Impact that the investment will have on the ability of the business to expand, upgrade, or modernize its capabilities.

(2) The extent to which the new capital investment will result in a more productive and competitive business enterprise and workforce.

(3) Potential for future growth in the industry.

Maximum – 40 points.

The maximum total score possible is 100 points. Projects that score less than 60 points will not be recommended for approval to the director.

64.3(4) Project period. An approved business must complete its project within three years of the application approval date. If the project involves the creation of new high-quality jobs, the approved business must, upon reaching its job creation goal, maintain those jobs for two additional years.

64.3(5) Negotiations. The department reserves the right to enter into negotiations with a business regarding the amount of benefits the business may be eligible to receive. The department reserves the right to negotiate the amount of all benefits except the refund of sales, services and use taxes paid to contractors and subcontractors.

261—64.4(80GA,HF677) Benefits. The following benefits may be available to an approved business. The amount of the benefits will be negotiated by the department with the approved business and reflected in the executed agreement.

64.4(1) Sales, services, and use tax refund. Pursuant to Iowa Code section 15.331A, the approved business shall be entitled to a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility being built, expanded, or rehabilitated as part of the project. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive a refund of sales, services and use taxes paid to contractors or subcontractors, the approved business must, within one year after project completion, make an application to the Iowa department of revenue.

64.4(2) Research activities credit. Pursuant to Iowa Code section 15.335, the approved business shall be entitled to a research activities credit. This tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal) or division III (corporate). This incentive is a tax credit for increasing research activities in this state during the period the business is participating in the program. This credit may equal up to 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33, subsection 5. If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the approved business with interest computed under Iowa Code section 422.25. This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. In lieu of claiming a refund, the approved business may elect to have the overpayment credited to its tax liability for the following year.

64.4(3) Investment tax credit or insurance premium tax credit.

a. Investment tax credit. An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the approved project. The percentage shall be equal to the amount provided in paragraph "c." Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

The approved business may not claim an investment tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

b. Insurance premium tax credits. An approved business may claim a tax credit equal to a percentage of the new investment directly related to the start-up, location, or expansion of an approved business under the program. The percentage shall be equal to the amount provided in paragraph "c." The tax credit shall be allowed against taxes imposed in Iowa Code chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The approved business may not claim an insurance premium tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an insurance premium tax credit for additional capital expenditures.

c. Tax credit percentage. The amount of tax credit claimed under this subrule shall be determined as follows:

(1) If the department determines, based on the application of the approved business, that high-quality jobs are not created but economic activity within the state is advanced, the approved business may claim a tax credit of up to 1 percent of the amount of new capital investment, as described in the agreement.

(2) If the department determines, based on the application of the approved business, that one to five high-quality jobs are created, the approved business may claim a tax credit of up to 2 percent of the amount of new capital investment, as described in the agreement.

(3) If the department determines, based on the application of the approved business, that six to ten high-quality jobs are created, the approved business may claim a tax credit of up to 3 percent of the amount of new capital investment, as described in the agreement.

(4) If the department determines, based on the application of the approved business, that 11 to 15 high-quality jobs are created, the approved business may claim a tax credit of up to 4 percent of the amount of new capital investment, as described in the agreement.

(5) If the department determines, based on the application of the approved business, that 16 or more high-quality jobs are created, the approved business may claim a tax credit of up to 5 percent of the amount of new capital investment, as described in the agreement.

64.4(4) Investment tax credit refunds. Subject to prior approval by the department, in consultation with the Iowa department of revenue, an approved business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to apply for a refund of all or a portion of an unused tax credit. For purposes of this subrule, an approved business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol. The refund may be used against a tax liability imposed under Iowa Code chapter 422, division II (personal), division III (corporate), and division V (franchise). To apply to receive a refund of all or a portion of an unused investment tax credit, the following procedures apply:

a. Department approval required. The department will determine whether an approved business's project primarily involves the production of value-added agricultural products or uses biotechnology-related processes.

b. How to apply for tax credit certificate. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those approved businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member approved for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credit for which the cooperative's members are requesting a tax credit certificate.

c. Application processing. The department will make public by June 1 of each fiscal year the total number of requests for tax credit certificates and the total dollar amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time following the June 1 announcement.

d. Issuance of tax credit certificates. The department shall not issue tax credit certificates to approved businesses in the new capital investment program, the new jobs and income program, and the enterprise zone program which total more than $4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of $4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dollar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of $1 million and the total amount of requested tax credit certificates equals $8 million, the business will be issued a tax credit certificate in the amount of $500,000.

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500{,}000$$

e. When claimed. Tax credit certificates shall not be valid until the tax year following the date of project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the Internal Revenue Code whose approved project primarily involves the production of ethanol. For such cooperative, the individual members of the cooperative are approved to receive the tax credit certificates. The approved business may not claim a tax credit refund unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year in which the tax credit refund is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until the tax credit is depleted, whichever occurs first.

f. Carryforward. An approved business may apply for a tax credit certificate once each year for up to seven years after the qualifying asset is placed in service or until the approved business's unused investment tax credit is depleted, whichever occurs first. For example, an approved business which completes a project in October 2004 and has an investment tax credit of $1 million may apply for a tax credit certificate in May 2005. If, because of the proration of the $4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of $300,000, the business may claim the $300,000 refund and carry forward the unused investment tax credit of $700,000 up to seven years or until the credit is depleted, whichever occurs first.

261—64.5(80GA,HF677) Agreement, compliance, and repayment provisions.

64.5(1) Agreement. After the department negotiates the amount of benefits that the approved business shall receive and approves the application, the department shall enter into an agreement with the approved business. This agreement shall include, but is not limited to:

a. Provisions governing the requirements of the Act and these rules which the approved business agreed to satisfy as described in the approved application;

b. Reporting requirements such as an annual certification by the approved business that it is in compliance with the Act and these rules;

c. The amount or level of tax benefits the approved business shall receive as negotiated by the department; and

d. The method of determining the amount of benefits received by the approved business, which will be repaid in the event of the failure to maintain the requirements of the Act and these rules.

In addition the agreement shall specify that an approved business that fails to maintain the requirements of the Act and these rules shall not receive benefits for each year during which the business is not in compliance. The approved business and the department must execute the agreement within 180 days from the application approval date. If the agreement is not signed by that date, the department may rescind the benefits awarded to the approved business unless the approved business has received prior written permission from the department to exceed the time frame for an agreed-upon time period.

64.5(2) Annual certification. An approved business shall certify annually to the community and the department that the business is in compliance with the Act, these rules, and the agreement it has entered into with the department.

64.5(3) On-site monitoring. The approved business shall, upon prior reasonable notice and at any time (during normal

business hours), permit the department, its representatives or the state auditor to examine, audit or copy any plans and work details pertaining to the project; all of the approved business's books, records, and accounts relating to the project; and all other documentation or materials related to the agreement.

64.5(4) Repayment of benefits. If the approved business has received benefits and fails to meet and maintain any of the requirements of the Act, these rules, or the agreement, the business is subject to repayment of all or a portion of the benefits that it has received. The repayment will be calculated as follows:

a. Job creation. If the approved business does not meet its job creation goal as defined in the agreement or fails to maintain the required number of jobs, the business shall repay a percentage of the tax credits claimed under subrules 64.4(2) and 64.4(3). The repayment percentage will be equal to the percentage of jobs that the approved business failed to create or maintain.

b. Wages and benefits. If the approved business fails to comply with the wage or benefit requirements outlined in the agreement, the business shall not receive the tax credits described in subrules 64.4(2) and 64.4(3) for each year during which the business is not in compliance.

c. Capital investment. If the approved business does not meet the capital investment requirement in the agreement, repayment of the tax credits claimed under subrules 64.4(2) and 64.4(3) shall be calculated as follows:

(1) If the business has not met the minimum investment requirement of $1 million, the business shall repay all of the benefits that it has received.

(2) If the business has met 50 percent or less of the pledged capital investment, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the pledged capital investment, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the pledged capital investment, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

d. Selling, disposing, or razing of property. If, within five years of purchase, the approved business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing structures for which an investment tax credit or insurance premium tax credit was claimed under subrule 64.4(3), the income tax liability of the approved business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) 100 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within one full year after being placed in service.

(2) 80 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within two full years after being placed in service.

(3) 60 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within three full years after being placed in service.

(4) 40 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within four full years after being placed in service.

(5) 20 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within five full years after being placed in service.

64.5(5) Layoffs or closures. If an approved business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the benefits and assistance, the department may reduce or eliminate all or a portion of the benefits and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the benefits and assistance, the business may be subject to repayment of all or a portion of the benefits and assistance that it has received.

64.5(6) Extensions. If an approved business fails to meet its requirements under the Act, these rules, or the agreement, the department, in consultation with the community, may elect to grant the business a one-year period to meet the requirements. Only one 12-month extension will be granted to the approved business. Extensions may be granted only when one of the following conditions applies:

a. The delay in achievement of the job creation goal or pledged capital investment was caused by events over which the approved business had no control and could not have reasonably predicted and there is a reasonable probability that the originally proposed job creation goal or pledged capital investment can be achieved; or

b. The project does not fit under paragraph "a" and the approved business has demonstrated to the department's satisfaction the existence of special circumstances.

261—64.6(80GA,HF677) Amendments. Any substantive change to an approved project will be considered a contract amendment. The amendment must be requested in writing. No amendment will be valid until approved by the department.

261—64.7(80GA,HF677) Other benefits. An approved business may receive other applicable federal, state, and local incentives and tax credits in addition to those provided in this program. However, an approved business which participates in this program shall not receive any funds, tax credits, or incentives from the new jobs and income program or the enterprise zone program.

These rules are intended to implement 2003 Iowa Acts, House File 677.

ARC 2669B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

These amendments set forth procedures to combine the elementary and secondary principal endorsements to allow a person to obtain the endorsement authorizing the person to serve as an elementary or secondary principal without regard to the grade level at which the person accrued teaching experience. The amendments also include competencies for the

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

supervisor of special education to allow a PK-12 administrator to serve also as a supervisor of special education. These amendments, in part, are intended to implement 2003 Iowa Acts, House File 549, which amends Iowa Code section 272.2.

The current subrule for an elementary principal endorsement was used as a foundation for the amendments. Therefore, the current subrule for a secondary principal endorsement is proposed to be rescinded.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, September 9, 2003, at 3 p.m. in Room 2 South, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, September 12, 2003. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272 as amended by 2003 Iowa Acts, House File 549.

The following amendments are proposed.

ITEM 1. Amend subrule 14.142(1) as follows:

14.142(1) ~~Elementary principal.~~ *PK-12 principal and PK-12 supervisor of special education.*

a. Authorization. The holder of this endorsement is authorized to serve as a principal of programs serving children from birth through grade ~~six~~ *twelve, a supervisor to instructional special education programs with children from birth to age 21, and a supervisor of support for special education programs for children from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8)*. ~~The holder of this endorsement may be assigned by local school board action to fulfill this responsibility at the 7-8 grade level.~~

b. Program requirements.

(1) Degree—master's.

(2) Content: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements.

1. Knowledge of early childhood, elementary, ~~and~~ early adolescent, *and secondary* level administration, supervision, and evaluation.

2. Knowledge and skill related to early childhood, elementary, ~~and~~ early adolescent, *and secondary* level curriculum development.

3. Knowledge of child growth and development from birth through ~~early~~ adolescence and developmentally appropriate strategies and practices of early childhood, elementary, and ~~early~~ adolescence, to include an observation practicum.

4. Knowledge of family support systems, factors which place families at risk, child care issues, and home-school community relationships and interactions designed to promote parent education, family involvement, and interagency collaboration.

5. Knowledge of school law and legislative and public policy issues affecting children and families.

~~6. Planned field experiences in early childhood and elementary or early adolescent school administration.~~

~~7~~ *6.* ~~Evaluator approval~~ *Completion of evaluator training* component.

7. Knowledge of current issues in special education administration.

8. Planned field experiences in elementary and secondary school administration including special education administration.

(3) Competencies: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. A school administrator is an educational leader who promotes the success of all students by accomplishing the following competencies.

1. Facilitates the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.

2. Advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.

3. Ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

4. Collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.

5. Acts with integrity, fairness, and in an ethical manner.

6. Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.

c. Other.

(1) The applicant must have had three years of teaching experience at the early childhood through grade ~~six~~ *twelve* level.

(2) Graduates from institutions in other states who are seeking initial Iowa licensure and the ~~elementary principal's~~ *PK-12 principal and PK-12 supervisor of special education* endorsement must meet the requirements for the standard license in addition to the experience requirements.

ITEM 2. Rescind and reserve subrule **14.142(2)**.

ARC 2658B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 217.6 and 2003 Iowa Acts, House File 667, section 50, the Department

of Human Services proposes to amend Chapter 53, "Rent Subsidy Program," appearing in the Iowa Administrative Code.

These amendments change the eligibility requirements for the rent subsidy program, as mandated by 2003 Iowa Acts, House File 667, section 50. Medicaid home- and community-based waiver recipients who are paying more than 30 percent of their income for rent and are not eligible for other rental assistance programs may be eligible for assistance under the rent subsidy program.

These amendments rescind rules requiring that consumers be discharged from a medical institution immediately before receiving waiver services or have reached age 18 during the last year of their institutional stay as conditions of eligibility. Under these amendments, only risk of placement in a nursing facility qualifies a needy waiver recipient for rent subsidy.

These amendments do not provide for waivers in specified situations because the legislation does not provide for exceptions. Individuals may request a waiver of these requirements under the Department's general rule on exceptions at rule 441—1.8(17A,217).

These amendments are also Adopted and Filed Emergency and published herein as **ARC 2654B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before August 27, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement 2003 Iowa Acts, House File 667, section 50.

ARC 2660B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 234.6 and 235B.5(1), the Department of Human Services proposes to amend Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These amendments make changes to rules on the Department's response to a report of suspected dependent adult abuse and on maintenance and confidentiality of abuse information. The amendments are necessary to conform the rules to statutory changes made by the Eightieth General Assembly in 2003 Iowa Acts, Senate File 416 and House File 558.

The amendments:

- Permit the Department to approve an agency and designate that agency to complete an assessment of necessary services for a dependent adult who is suspected of being abused and authorize an approved agency's access to founded abuse information. These changes will allow the Department to approve the Elder Abuse Initiative to provide assessments and to communicate more freely during a dependent adult abuse evaluation. The Elder Abuse Initiative is funded by the Senior Living Trust Fund through the Department of Elder Affairs and the area agencies on aging.
- Remove the category referred to as "undetermined reports." Previously, Department protective service staff could find a dependent adult abuse report "undetermined" when they could not determine that there was a preponderance of evidence that the abuse was "founded" or "unfounded." As of July 1, all reports must be determined to be either "founded" based on a preponderance of evidence or "unfounded."
- Require the Department to maintain "unfounded" reports for one year instead of expunging them immediately.
- Allow the Department to inform a subject of a dependent adult abuse report that a person is listed on the child or dependent adult abuse registry or the sex offender registry as having sexually abused someone, if it is determined disclosure is necessary for the protection of the dependent adult.
- Expand access to dependent adult abuse information for entities involved in investigation of dependent adult abuse or care of a dependent adult, including multidisciplinary teams and the long-term care resident advocate in the Department of Elder Affairs.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

These amendments are also Adopted and Filed Emergency and are published herein as **ARC 2656B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before August 27, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code chapter 235B as amended by 2003 Iowa Acts, Senate File 416 and House File 558.

ARC 2659B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 202, "Foster Care Services," Iowa Administrative Code.

This amendment conforms the rule on voluntary foster care placements to statutory changes made by 2003 Iowa Acts, House File 667, section 37. That legislation extends from 30 days to 90 days the potential duration of a foster care placement made on a voluntary basis for a child under the age of 18. (Longer placements must be authorized by juvenile court action.) The amendment also makes technical changes

HUMAN SERVICES DEPARTMENT[441](cont'd)

to update the form number of the Voluntary Placement Agreement and the title of the Department employee responsible for approving the Voluntary Placement Agreement, for clarity.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

This amendment is also Adopted and Filed Emergency and is published herein as **ARC 2655B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before August 27, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 234.35(1)"c" as amended by 2003 Iowa Acts, House File 667, section 37.

ARC 2643B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, "Hospitals," Iowa Administrative Code.

The proposed amendments clarify the Department's administrative rules by updating references to the Code of Federal Regulations (CFR) and the National Fire Protection Association's (NFPA) Life Safety Code for hospitals. Additionally, the proposed amendments bring the chapter into compliance with the Governor's Executive Order Number 8.

The Hospital Licensing Board reviewed and approved the proposed amendments at its June 25, 2003, meeting. The proposed amendments also were presented to the State Board of Health for initial review at the Board's July 9, 2003, meeting.

Item 1 of the proposed amendments updates the Department's administrative rules dealing with hospital laboratory services, and Item 2 updates the rules dealing with Life Safety Code requirements for hospitals. It has been determined that adoption of the proposed amendments will have no financial impact on the Department or the regulated entities.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 26, 2003. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to david.werning@dia.state.ia.us.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

The following amendments are proposed.

ITEM 1. Amend subrule 51.18(3) as follows:

51.18(3) The hospital must ensure that all laboratory services provided to its patients are performed in a laboratory certified in accordance with the Code of Federal Regulations in 42 CFR~~,~~ Part 493, October 1, ~~1997~~ *2001*.

ITEM 2. Amend subrule 51.52(3) as follows:

51.52(3) Life Safety Code. Facilities and construction shall be in accordance with National Fire Protection Association (NFPA) Standard 99 (Standards for Health Care Facilities-1999 edition), Standard 101 (Life Safety Code-~~1985~~ *2000* edition), and rules of local authorities. Facilities and construction shall be approved by the state fire marshal or local authority having jurisdiction.

ARC 2647B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 3, "Pharmacy Technicians," Iowa Administrative Code.

The amendment was approved at the June 24-25, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment clarifies the requirements for maintaining confidentiality of patient information as those requirements relate to pharmacy technicians.

Requests for waiver or variance of the provisions of this rule will not be considered because these requirements are not discretionary and are consistent with requirements under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on August 26, 2003. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@ibpe.state.ia.us.

This amendment is intended to implement Iowa Code section 155A.6.

The following amendment is proposed.

Amend subrule 3.28(2) as follows:

3.28(2) Confidentiality. In the absence of express written ~~consent~~ *authorization* from the patient or written order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, ~~or~~ a person duly authorized by law to receive such information,

PHARMACY EXAMINERS BOARD[657](cont'd)

or as otherwise provided in rule 657—8.16(124,155A), any of the following:

a. The contents of any prescription drug order or medication order or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient;

b. Any patient's name, address, social security number, or any information that could be used to identify the patient;

~~b~~ *c*. The nature, extent, or degree of illness suffered by any patient; or

~~c~~ *d*. Any medical information furnished by the prescriber.

ARC 2646B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendment was approved at the June 24-25, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment identifies specific requirements for labeling of a prescription medication container when the pharmacist dispenses a brand name drug product for a generic drug product ordered by the prescriber.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on August 26, 2003. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@ibpe.state.ia.us.

This amendment is intended to implement Iowa Code section 155A.28.

The following amendment is proposed.

Amend subrule **6.10(1)**, paragraph **"g,"** as follows:

g. Unless otherwise directed by the prescriber, the label shall bear the name, strength, and quantity of the drug dispensed.

(1) If a pharmacist selects an equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label shall identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this ~~paragraph~~ *subparagraph* shall take the form of the following statement on the drug container label: "(generic name) Generic for (brand name product)"*;*

(2) If a pharmacist selects a brand name drug product for a generic drug product prescribed by a practitioner, the prescription container label shall identify the generic drug product ordered by the prescriber and shall also identify the brand name drug product dispensed. The dual identification directed under this subparagraph may take a form similar to that directed in subparagraph (1) or may parenthetically identify the brand name drug product;

ARC 2645B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendments were approved at the June 24-25, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments change the terms "consent" or "release" to "authorization" in rules relating to the authorization executed by the patient for release of confidential patient information or for the delivery of patient medications to anyone other than the patient or patient's caregiver. New subrule 8.4(4) is added to require that a pharmacist wear a visible identification badge that identifies the individual as a pharmacist and includes at least the pharmacist's first name, when the pharmacist is on duty.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on August 26, 2003. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@ibpe.state.ia.us.

These amendments are intended to implement Iowa Code sections 124.301, 147.72, 155A.13, and 155A.20.

The following amendments are proposed.

ITEM 1. Amend rule 657—8.4(155A) by adopting the following **new** subrule 8.4(4):

8.4(4) Identification badge. A pharmacist shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacist and includes at least the pharmacist's first name.

ITEM 2. Amend subrule **8.15(1)**, paragraph **"d,"** as follows:

d. At the patient's or caregiver's place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written ~~consent~~ *authorization* of the patient or patient's caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written ~~consent~~ *authorization*; and

PHARMACY EXAMINERS BOARD[657](cont'd)

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

ITEM 3. Amend subrule **8.16(2)**, paragraph **"a,"** as follows:

a. Pursuant to the express written ~~consent or release~~ *authorization* of the patient or the order or direction of a court.

ITEM 4. Amend subrule **8.16(3)** by adopting the following **new** paragraph **"d"**:

d. Disclosing information necessary for the processing of claims for payment of health care operations or services.

ARC 2644B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 124.301, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 20, "Pharmacy Compounding Practices," Iowa Administrative Code.

The amendment was approved at the June 24-25, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment adds new subrule 20.10(6), which clearly identifies the information required to be included on the prescription container label affixed to the dispensing container of any compounded drug product dispensed by a pharmacy. The amendment also renumbers current subrules 20.10(6) and 20.10(7) as subrules 20.10(7) and 20.10(8), respectively.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on August 26, 2003. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@ibpe.state.ia.us.

This amendment is intended to implement Iowa Code sections 126.10 and 155A.28.

The following amendment is proposed.

Amend rule 657—20.10(124,126,155A) by adding the following **new** subrule 20.10(6) and renumbering existing subrules **20.10(6)** and **20.10(7)** as **20.10(7)** and **20.10(8)**:

20.10(6) Label information required. The label affixed to or on the dispensing container of any compounded drug product dispensed by a pharmacy pursuant to a prescription drug order, excluding a sterile product compounded pursuant to 657—8.30(126,155A), shall bear the following:

a. Serial number (a unique identification number of the prescription);

b. The name, telephone number, and address of the pharmacy;

c. The name of the patient or, if such drug is prescribed and compounded for an animal, the species of the animal and the name of its owner;

d. The name of the prescribing practitioner;

e. The date the compounded drug product is dispensed;

f. The directions or instructions for use, including precautions to be observed;

g. The name and quantity or percentage of each bulk drug substance contained in the compounded drug product;

h. The initials or other unique identification of the dispensing pharmacist.

ARC 2672B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 222, "Continuing Education for Podiatrists," and Chapter 223, "Practice of Podiatry," Iowa Administrative Code.

The proposed amendments rescind the current rule for utilization and cost control review, which was a part of the approved agency plan for rule revisions. Rules pertaining to the utilization of conscious sedation on podiatric patients are proposed to implement Iowa Code chapter 149 as amended by 2003 Iowa Acts, House File 503.

Interested persons may present written comments on the proposed amendments no later than August 26, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail ebaird@idph.state.ia.us.

A public hearing will be held on August 26, 2003, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapter 149 as amended by 2003 Iowa Acts, House File 503, and Iowa Code section 272C.3.

The following amendments are proposed.

ITEM 1. Amend subrule **222.3(2)** by relettering paragraphs **"b"** to **"f"** as **"c"** to **"g"** and adopting the following **new** paragraph **"b"**:

b. If the podiatrist utilizes conscious sedation, the podiatrist shall obtain a minimum of six hours of continuing education in the area of conscious sedation;

ITEM 2. Rescind rule 645—223.1(514F) and adopt the following **new** rule in lieu thereof:

645—223.1(149) Definitions. For the purposes of these rules, the following definitions shall apply:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

"Ambulatory surgical center" or "ASC" means an ambulatory surgical center that has in effect an agreement with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, in accordance with 42 CFR Part 416.

"Conscious sedation" means a depressed level of consciousness produced by the administration of pharmacological substances that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

ITEM 3. Renumber rules **645—223.2(139A)** and **645—223.3(149)** as **645—223.3(139A)** and **645—223.4(149)** and adopt the following **new** rule 645—223.2(149):

645—223.2(149) Requirements for administering conscious sedation.

223.2(1) A licensed podiatrist who holds a permanent license in good standing may use conscious sedation for podiatric patients on an outpatient basis in a hospital or ASC after the podiatrist has submitted to the board office an attestation on a form approved by the board. That attestation shall include the following:

a. Evidence of successful completion within the past five years of a formal, four-week anesthesiology rotation in a residency program approved by the Council on Podiatric Medical Education (CPME), as verified by the signature of the residency director on the attestation.

b. Current certification in Advanced Cardiac Life Support (ACLS).

c. Current certification in Pediatric Advanced Life Support (PALS) if the podiatrist utilizes conscious sedation for children.

Prior to October 1, 2004, a podiatrist who meets all requirements of this rule except for the requirement of paragraph "a" above may submit in lieu thereof documentation of education and experience equivalent to that required in paragraph "a," which shall be subject to board approval. The documentation shall be submitted on the attestation form approved by the board and shall include the signature of an appropriate administrative authority, such as the chief of surgery or the chief of anesthesiology, who shall verify the podiatrist's competent utilization of conscious sedation.

223.2(2) A podiatrist who has an attestation on file and continues to use conscious sedation shall meet the requirements of 645—Chapter 222 at the time of license renewal, which include six hours of continuing education in the area of conscious sedation. In addition, the podiatrist shall maintain current certification in ACLS and, if the podiatrist uses conscious sedation for children, current certification in PALS.

223.2(3) A podiatrist shall only utilize conscious sedation in a hospital or ASC when the podiatrist has been granted clinical privileges by the governing body of the hospital or ASC in accordance with approved policies and procedures of the hospital or ASC.

223.2(4) It is a violation of the standard of care for a podiatrist to use conscious sedation that results in a general anesthetic state.

223.2(5) Reporting of adverse occurrences related to conscious sedation. A licensed podiatrist who has an attestation on file with the board must submit a report to the board within 30 days of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a result of conscious sedation. The report shall include the following:

a. Description of podiatric procedures;

b. Description of preoperative physical condition of patient;

c. List of drugs and dosage administered;

d. Description, in detail, of techniques utilized in administering the drugs;

e. Description of adverse occurrence, including:

(1) Symptoms of any complications including, but not limited to, onset and type of symptoms;

(2) Treatment instituted;

(3) Response of the patient to treatment; and

f. Description of the patient's condition on termination of any procedures undertaken.

223.2(6) Failure to report. Failure to comply with subrule 223.2(5) when the adverse occurrence is related to the use of conscious sedation may result in the podiatrist's loss of authorization to administer conscious sedation or in other sanctions provided by law.

223.2(7) Record keeping. The patient's chart must include:

a. Preoperative and postoperative vital signs;

b. Drugs administered;

c. Dosage administered;

d. Anesthesia time in minutes;

e. Monitors used;

f. Intermittent vital signs recorded during procedures and until the patient is fully alert and oriented with stable vital signs; and

g. Name of the person to whom the patient was discharged.

223.2(8) Failure to comply with these rules is grounds for discipline.

ARC 2683B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 136A.5 and 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 4, "Birth Defects Institute," Iowa Administrative Code.

These proposed amendments provide definitions for clarification of the programs within the Birth Defects Institute, augment the newborn screening policy of the Iowa Neonatal Metabolic Screening Program, increase the newborn metabolic screening fee, and provide for the surveillance of the individuals identified by newborn metabolic screening and of selected neuromuscular disorders.

Item 1 adds new definitions to Chapter 4.

Item 2 adds other amino acid, organic acid, and fatty oxidation disorders detectable by tandem mass spectrometry to the newborn metabolic screening panel. This item also adds monitoring and tracking of individuals identified as having genetic or metabolic diseases through the newborn metabolic screening program.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Item 3 provides consistency in terms used within Chapter 4.

Item 4 changes the newborn metabolic screening fee.

Item 5 adds statewide, active surveillance for selected neuromuscular disorders to the description of the Neuromuscular and Other Related Genetic Disease Program.

Item 6 proposes new subrules for the surveillance of selected neuromuscular disorders and central registry activities.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 26, 2003. Such written comments should be directed to Dawn Mouw, Program Planner, Birth Defects Institute, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to dawn.mouw@idph.state.ia.us.

A public hearing will be held over the Iowa Communications Network (ICN) on August 26, 2003, from 11 a.m. to 12 noon in the ICN Conference Room, Lucas State Office Building, 321 E. 12th Street, Sixth Floor, Des Moines, Iowa 50319. Additional ICN sites for the hearing are scheduled for the following locations:

Kimberly Center
1002 W. Kimberly
Davenport, Iowa 52806

Clear Creek-Amana High School
311 W. Marengo Road
Tiffin, Iowa 52340

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may require special accommodations, such as those for hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 136A.

The following amendments are proposed.

ITEM 1. Amend rule **641—4.2(136A)** by adding the following **new** definitions in alphabetical order.

"Birthing facility" means the facility in which a child was born.

"Consulting physician" means a physician designated by the birth defects institute to interpret test results and provide consultation to a licensed health care provider.

"County registrar" means the individual responsible for registering and maintaining vital statistics records within a county pursuant to Iowa Code sections 144.9 and 331.611.

"Health care provider" means a licensed physician, nurse practitioner, or physician assistant providing care to an individual.

"Receiving facility" means the facility receiving an infant from a birthing facility.

"Tandem mass spectrometry" means the use of tandem mass spectrometer and associated software to test a newborn screening sample.

"Transferring facility" means the birthing facility which transfers the infant to a hospital.

ITEM 2. Amend subrule 4.3(1) as follows:

4.3(1) Newborn screening policy.

a. ~~It shall be the policy of the state of Iowa that all~~ *All* newborns *and infants born in the state of Iowa* shall be screened for ~~hypothyroidism,~~ *medium chain acyl Co-A dehydrogenase deficiency,* phenylketonuria, *and other amino acid, organic acid, and fatty oxidation disorders detectable by tandem mass spectrometry; hypothyroidism;* galactosemia~~,~~ *;* hemoglobinopathies~~,~~ *;* congenital adrenal hyperplasia~~, medium chain acyl Co-A dehydrogenase deficiency,~~ *;* and biotinidase deficiency.

b. As new disorders are recognized and new technologies and tests become available, the institute shall follow protocols developed by the department in regard to the addition of disorders to or deletion of disorders from the screening panel. The state board of health shall provide final approval for the addition of new disorders to the screening panel.

c. The institute may monitor individuals identified as having a genetic or metabolic disease for the purpose of determining whether early detection, treatment, and counseling lead to the amelioration or avoidance of the adverse outcomes of the disease. Birthing facilities and health care providers shall provide patient data and records to the institute upon request to facilitate the monitoring. Any identifying information provided to the institute shall remain confidential pursuant to Iowa Code section 22.7(2).

ITEM 3. Amend subrule **4.3(7)**, paragraph **"c,"** subparagraph **(3)**, as follows:

(3) Before research can commence, proposals shall be approved by the ~~appropriate human subjects review committees~~ *researcher's institutional review board*, the birth defects advisory committee, and the department.

ITEM 4. Amend subrule **4.3(8)**, paragraph **"b,"** as follows:

b. The department shall annually review and determine the fee to be charged for all activities associated with this program. The review and fee determination shall be completed at least one month prior to the beginning of the fiscal year. The newborn metabolic screening fee shall be ~~$46~~ *$56* beginning ~~July~~ *August* 1, ~~2002~~ *2003*.

ITEM 5. Amend rule 641—4.6(136A), introductory paragraph, as follows:

641—4.6(136A) Neuromuscular and other related genetic disease program (NMP). This program provides comprehensive services statewide for individuals and families with neuromuscular disorders through outreach clinics *and statewide, active surveillance for selected neuromuscular disorders.*

ITEM 6. Add **new** subrules 4.6(4) through 4.6(6) as follows:

4.6(4) Surveillance for selected neuromuscular disorders. The central registry for selected neuromuscular disorders may conduct active, statewide surveillance. The surveillance is to determine the occurrence and trends of the selected neuromuscular disorders, to conduct thorough and complete epidemiological surveys through long-term follow-up and to assist in the planning and provision of services to children with selected neuromuscular disorders.

4.6(5) Definition. Neuromuscular disorders include diagnosis involving the muscle, nerve, or the neuromuscular junction. These disorders may be diagnosed at any age of life, and annual follow-up of patients is required until death. Selected neuromuscular disorders include Duchenne and Becker Muscular Dystrophies.

4.6(6) Central registry activities.

a. The institute shall establish an agreement with the central registry to conduct statewide, active surveillance of selected neuromuscular disorders.

b. The central registry shall use the muscular dystrophy coding scheme defined by the Centers for Disease Control

and Prevention (CDC) of the United States Public Health Service.

c. The central registry staff shall review hospital records, clinical charts, physician's records, vital records and prenatal records pursuant to 641—1.3(139A) and any other information that the central registry deems necessary and appropriate for muscular dystrophy surveillance.

ARC 2684B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 139A.8(8), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 7, "Immunization of Persons Attending Elementary or Secondary Schools or Licensed Child Care Centers," Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers. These amendments define who can sign the medical exemption form; reword the religious exemption section; define a valid certificate; define the use of the immunization registry; and define the release of immunization information. The amendments also provide some general cleanup of the chapter, including definitions and cross references to the Iowa Code.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 26, 2003. Such written materials should be directed to the Bureau of Disease Prevention and Immunization, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (800)831-6292. Persons who wish to convey their views orally should contact the Bureau of Disease Prevention and Immunization at (515)281-4917.

Also, there will be a public hearing on August 26, 2003, from 8:30 to 10:30 a.m. in Conference Room 518 on the fifth floor of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Bureau of Disease Prevention and Immunization and advise of specific needs.

These amendments are intended to implement Iowa Code sections 139A.8 and 22.7(2).

The following amendments are proposed.

ITEM 1. Amend rules **641—7.1(139)** through **641—7.10(139)**, parenthetical implementations, as follows:

(~~139~~ *139A*)

ITEM 2. Amend rules **641—7.1(139A)** through **641—7.10(139A)** by striking the implementation sentence at the end of each rule.

ITEM 3. Amend rule **641—7.1(139A)** as follows:

Rescind the definition of "doctor."

Adopt the following **new** definitions in alphabetical order:

"Department" means the Iowa department of public health.

"Enrolled user" means a user of the registry who has completed an enrollment form that specifies the conditions under which the registry can be accessed and who has been issued an identification code and password by the department.

"Immunization registry" or "registry" means the database and file server maintained by the department as well as the software application that allows enrolled users to exchange immunization records.

"Nurse practitioner" means a person licensed to practice as a registered nurse pursuant to Iowa Code chapter 152 and certified by a professional certifying body approved by the board of nursing.

"Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to Iowa Code chapter 148, 150, or 150A.

"Physician assistant" means a person licensed to practice as a physician assistant pursuant to Iowa Code chapter 148C.

"Public health nurse" means a nurse who provides immunization services under the direction of a local board of health.

ITEM 4. Amend subrules 7.3(1) and 7.3(2) as follows:

7.3(1) A medical exemption may be granted to an applicant when, in the ~~doctor's~~ opinion *of a physician, nurse practitioner, or physician assistant,* the required immunizations would be injurious to the health and well-being of the applicant or any member of the applicant's family or household. A medical exemption may apply to all the required immunizations. A waiver to a specific vaccine due to an age restriction or medical contraindication shall be indicated on the certificate of immunization. A certificate of immunization exemption for medical reasons is valid only when signed by a ~~doctor~~ *physician, nurse practitioner, or physician assistant*. If, in the opinion of the ~~doctor~~ *physician, nurse practitioner, or physician assistant* issuing the medical exemption, the exemption should be terminated or reviewed at a future date, an expiration date shall be recorded on the certificate of immunization exemption.

7.3(2) A religious exemption may be granted to an applicant ~~who is an adherent or member of a recognized religious denomination and in which the tenets and practices of the religious denomination conflict with immunizations.~~ *if immunization conflicts with a genuine and sincere religious belief.* A certificate of immunization exemption for religious reasons shall ~~indicate the religion of the applicant and be signed by the applicant, or if a minor, by the parent or guardian or legally authorized representative.~~ *be signed by the applicant or, if the applicant is a minor, by the parent or guardian or legally authorized representative, and shall attest that immunization conflicts with a genuine and sincere religious belief and that the belief is in fact religious, and not based merely on philosophical, scientific, moral, personal, or medical opposition to immunizations.* The certificate of immunization exemption for religious reasons is valid only when notarized. Religious exemptions shall become null and void during times of emergency as determined by the state board of health and declared by the director of public health.

ITEM 5. Amend subrule 7.4(6) as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

7.4(6) 4 years of age and older: Applicants enrolled or attempting to enroll in a public or nonpublic elementary or secondary school shall have received the following:

a. At least three doses of combined diphtheria, tetanus, and pertussis vaccine. At least one dose of combined vaccine shall have been received after the applicant's fourth birthday. ~~Applicants seven years of age and older are exempt from receiving further doses of pertussis vaccine. Adult tetanus and diphtheria or pediatric diphtheria and tetanus vaccine should be substituted for combined diphtheria, tetanus and pertussis vaccine for children seven years of age and older or when pertussis vaccine is contraindicated for the child; and~~ *Applicants seven years of age and older are exempt from receiving further doses of pertussis vaccine; therefore, adult tetanus and diphtheria should be used. For children younger than seven years of age, pediatric diphtheria and tetanus vaccine should be substituted when the pertussis vaccine is contraindicated for the child; and*

b. At least three doses of trivalent polio vaccine. At least one dose of trivalent polio vaccine shall have been received after the applicant's fourth birthday~~.~~ *; and*

c. At least one dose of rubeola (measles) and rubella containing vaccine or demonstrate a positive antibody test if *the applicant* enrolled prior to July 3, 1991. This dose shall have been received ~~on or~~ after *the applicant was at least* 12 months of age. Applicants enrolled or attempting to enroll for the first time on or after July 3, 1991, shall have received at least two doses of rubeola (measles) and rubella containing vaccine ~~if four years of age or older~~ or demonstrate a positive antibody test. The first dose shall have been received ~~on or~~ after *the applicant was at least* 12 months of age. The second dose shall have been received no less than 30 days after the first dose~~.~~ *; and*

d. At least three doses of hepatitis B vaccine if *the applicant was* born on or after July 1, 1994, prior to *the applicant's* enrollment in school~~.~~ *; and*

[EDITOR'S NOTE: New paragraph "e" was Adopted and Filed Emergency herein. See **ARC 2652B**.]

ITEM 6. Amend rule 641—7.5(139A) as follows:

641—7.5(139A) Proof of immunization.

7.5(1) Applicants, or their parents or guardians, shall submit a valid Iowa department of public health certificate of immunization to the admitting official of the school or licensed child care center in which the applicant wishes to enroll. To be valid, the certificate shall be *the certificate of immunization issued and provided by the department, a computer-generated copy from the immunization registry, or a certificate of immunization which has been approved in writing by the department and shall be* signed by a ~~doctor,~~ *physician,* ~~or~~ a ~~physician's~~ *physician* assistant, ~~or~~ a ~~registered~~ nurse in an attending ~~doctor's~~ *physician's* office, ~~or~~ a nurse practitioner, ~~or~~ a county public health nurse, ~~or~~ a school nurse, or an official of a local health department. The judgment of the adequacy of the applicant's immunization history should be based on records kept by the person signing the certificate of immunization or personal knowledge of the applicant's immunization history, or comparable immunization records from another person or agency, or an international certificate of vaccination, or the applicant's personal health records. If personal health records are used to make the judgment, the records shall provide the types of immunizations received, and the dates, and the sources of the immunizations. Persons validating the certificates of immunization are not held responsible for the accuracy of the information used to validate the certificates of immunization if the information is from sources other than their own records or personal knowledge.

7.5(2) Persons wishing to enroll who do not have a valid Iowa department of public health certificate of immunization available to submit to the admitting official shall be referred to a ~~doctor,~~ *physician,* ~~or~~ a ~~physician's~~ *physician* assistant, ~~or~~ a ~~registered~~ nurse in an attending ~~doctor's~~ *physician's* office, ~~or~~ a nurse practitioner, ~~or~~ a county public health nurse, ~~or~~ a school nurse, or an official of a local health department to obtain a valid certificate.

ITEM 7. Amend subrule 7.6(1) as follows:

7.6(1) Applicants who have begun but not completed the required immunizations may be granted provisional enrollment. To qualify for provisional enrollment, applicants shall have received at least one dose of each of the required vaccines or be a transfer student from another school system. Applicants shall submit a valid Iowa department of public health provisional certificate of immunization to the admitting official of the school or licensed child care center in which the applicant wishes to be provisionally enrolled. To be valid, the certificate shall be signed by a ~~doctor,~~ *physician,* ~~or~~ a ~~physician's~~ *physician* assistant, ~~or~~ a ~~registered~~ nurse in an attending ~~doctor's~~ *physician's* office, ~~or~~ a nurse practitioner, ~~or~~ a county public health nurse, ~~or~~ a school nurse, or an official of a local health department. Persons validating the provisional certificates of immunization are not held responsible for the accuracy of the information used to validate the provisional certificate of immunization if the information is from sources other than their own records or personal knowledge.

a. Any person wishing to be provisionally enrolled who does not have a valid Iowa department of public health provisional certificate of immunization to submit to the admitting official shall be referred to a ~~doctor,~~ *physician,* ~~or~~ a ~~physician's~~ *physician* assistant, ~~or~~ a ~~registered~~ nurse in an attending ~~doctor's~~ *physician's* office, ~~or~~ a nurse practitioner, ~~or~~ a county public health nurse, ~~or~~ a school nurse, or an official of a local health department to obtain a valid certificate.

b. Reserved.

ITEM 8. Amend subrule **7.7(2)** and rule **641—7.9(139A)** by inserting the words "Iowa Code section 139A.8" in lieu of the words "Iowa Code section 139.9".

ITEM 9. Rescind rule 641—7.10(139A) and adopt the following **new** rule in lieu thereof:

641—7.10(22) Iowa's immunization registry.

7.10(1) Iowa's immunization registry. The department shall maintain a statewide immunization registry. Enrolled users are responsible for purchasing and maintaining all computer hardware related to use of the registry and for providing an Internet connection to transfer information between the user's computer and the registry.

7.10(2) Purpose and permitted uses of registry. The registry shall consist of immunization information, including identifying and demographic data, to allow enrolled users to maintain and access a database of immunization histories for purposes of ensuring that patients are fully immunized. Enrolled users shall not use information obtained from the registry to market services to patients or nonpatients, to assist in bill collection services, or to locate or identify patients or nonpatients for any purpose other than those expressly provided in this rule.

7.10(3) Release of information to the registry. Enrolled users may provide immunization information including identifying and demographic data to the registry. Informa-

tion provided may include, but is not limited to, the following:

a. Name of patient;
b. Gender of patient;
c. Date of birth;
d. Race;
e. Ethnicity;
f. Birth state and birth country;
g. Address;
h. Parents' names;
i. Mother's maiden name;
j. Type of vaccination administered;
k. Dose or series number of vaccine;
l. Date vaccination was administered;
m. Lot number;
n. Contraindications, precautions;
o. Provider name, license, and business address; and
p. Patient history, including previously unreported doses.

7.10(4) Confidentiality of registry information. Immunization information, including identifying and demographic data maintained on the registry, is confidential and may not be disclosed except under the following limited circumstances:

a. The department may release information from the registry to the following:

(1) The person immunized or the parent or legal guardian of the person immunized;

(2) Enrolled users of the registry who have completed an enrollment form that specifies the conditions under which the registry can be accessed and who have been issued an identification code and password by the department;

(3) Persons or entities requesting immunization data in an aggregate form that does not identify an individual either directly or indirectly.

b. Enrolled users shall not release immunization data obtained from the registry except to the person immunized, the parent or legal guardian of the person immunized, health records staff of licensed child care centers and schools, medical or health care providers providing continuity of care, and other enrolled users of the registry.

ITEM 10. Adopt **new** rule 641—7.11(22) as follows:

641—7.11(22) Release of immunization information.

7.11(1) Between a physician, a physician assistant, a nurse in an attending physician's office, a nurse practitioner, or a county public health nurse and the elementary or secondary school or licensed child care center that the child attends. A physician, a physician assistant, a nurse in an attending physician's office, a nurse practitioner, or a county public health nurse may disclose a student's immunization information, including the student's name, date of birth, and demographic information, the day, month, year and name of vaccine administered, and clinic source and location, to an elementary or secondary school or a licensed child care center upon written or verbal request from the elementary or secondary school or licensed child care center. Written or verbal permission from a student or parent is not required to release this information to an elementary or secondary school or licensed child care center.

7.11(2) Among physicians, physician assistants, nurses in an attending physician's office, nurse practitioners, and county public health nurses. Immunization information, including the student's name, date of birth, and demographic information, the day, month, year and name of vaccine administered, and clinic source and location, may be provided by one physician, physician assistant, nurse in an attending physician's office, nurse practitioner, or county public health nurse to another health care provider without written or verbal permission from the student or the parent.

ITEM 11. Amend **641—Chapter 7** by adopting a **new** implementation sentence at the end of the chapter as follows:

These rules are intended to implement Iowa Code sections 139A.8 and 22.7(2).

ARC 2653B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 139A.8(8), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 7, "Immunization of Persons Attending Elementary or Secondary Schools or Licensed Child Care Centers," Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers. The Iowa General Assembly passed 2003 Iowa Acts, House File 641, which adds the varicella vaccine to the list of immunizations required for enrollees in child care centers and public or nonpublic elementary or secondary schools. These amendments provide information about the dose and timing of this vaccine. Child care centers and schools are expected to comply with this requirement as soon as possible. Complete compliance is expected by January 1, 2004.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 26, 2003. Such written materials should be directed to the Bureau of Disease Prevention and Immunization, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (800)831-6292. Persons who wish to convey their views orally should contact the Bureau of Disease Prevention and Immunization at (515)281-4917.

Also, there will be a public hearing on August 26, 2003, from 8:30 to 10:30 a.m. in Conference Room 518 on the fifth floor of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Bureau of Disease Prevention and Immunization and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2652B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 139A.8 as amended by 2003 Iowa Acts, House File 641.

ARC 2673B

REAL ESTATE COMMISSION[193E]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 543B.18 and 543B.27, the Real Estate Commission hereby proposes to amend Chapter 9, "Fees," Iowa Administrative Code.

The proposed amendment is intended to reduce license fees. 2003 Iowa Acts, House File 655, eliminated the Real Estate Commission Fund, which will result in overfunding.

A public hearing will be held on August 26, 2003, at 10 a.m. in the Second Floor Professional Licensing Conference Room, 1920 SE Hulsizer, Ankeny, Iowa, at which time persons may present their views on the proposed amendment either orally or in writing. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Consideration will be given to all written suggestions or comments received by the end of the business day on August 26, 2003. Comments should be addressed to Roger Hansen, Executive Officer, Iowa Real Estate Commission, 1920 SE Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to Roger.Hansen@comm7.state.ia.us.

This amendment is intended to implement Iowa Code section 543B.27.

The following amendment is proposed.

Amend rule 193E—9.1(543B) as follows:

193E—9.1(543B) Fees.

9.1(1) Original license or renewal.

Broker license	~~$170~~	*120*
Additional officer or partner license	$ ~~50~~	*30*
Firm license	~~$170~~	*120*
Branch office license	$ ~~50~~	*30*
Trade name license	$ ~~50~~	*30*
Salesperson license	~~$125~~	*75*

9.1(2) Fee for renewal of broker and salesperson ~~license~~ *licenses* between January 1 and January 30 following expiration of license is the regular renewal fee plus $25 reinstatement fee.

Broker license	~~$195~~	*145*
Salesperson license	~~$150~~	*100*

Reinstatement fee is not applicable to a firm license, additional officer license, additional partner license, trade name license, or branch office license.

~~**9.1(3)** Fee for certification of license is $25.~~

ARC 2662B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to rescind Chapter 115, "Utility Accommodation," and adopt new Chapter 115, "Utility Accommodation," Iowa Administrative Code.

These rules apply to utility facilities occupying the primary highway right-of-way. The rules were reviewed in accordance with Executive Order Number 8. Several minor changes have been made to add definitions for terms used in the chapter, identify a contact office, eliminate redundant provisions and clarify ambiguous language. More significant changes are discussed below.

Where appropriate, the new rules allow more flexibility in materials and methods. For example, detailed listings of encasement materials acceptable to the Department are found in the current rules but are not included in the new rules. Under the new rules, the utility owner is responsible for selecting encasement materials that comply with applicable governmental, franchise and industry standards.

Fees for utility facility attachments to bridges and fees for longitudinal occupancy of freeway right-of-way are increased. The attachment fees set out in the current rules were adopted in 1985. The occupancy fees set out in the current rules were adopted in 1989.

The new rules establish a deadline of 90 days after construction is complete for submission of either an as-built plan or a letter certifying that the utility facility was placed as described in the original utility accommodation permit. Under the current rules, utility owners are required to submit as-built plans, but no deadline is given. The new rules also provide that if the utility owner fails to submit the plan or letter within the time required, the Department may hire a contractor to prepare an as-built drawing, at the cost of the utility owner. The new rules also make clear that the utility owner is responsible for costs incurred by the Department or its contractors due to errors in as-built plans or improper placement of the utility facility.

The new rules consolidate and simplify clear zone requirements.

The new rules establish administrative procedures for utility facility adjustments made necessary by highway construction projects. The current rules address the accommodation of utility facilities within the right-of-way but do not adequately address the issues and responsibilities of the Department and utility owners when utility facilities must be adjusted as a result of a highway project.

Other new provisions include the following:

1. Federal Highway Administration approval is required for waivers involving interstate highways.
2. A utility accommodation permit is not required for storm sewers, subdrains and lighting designed and constructed as part of a Department highway construction project.
3. The Department may require a performance bond for certain utility work within the primary highway right-of-way.

TRANSPORTATION DEPARTMENT[761](cont'd)

4. The utility owner is responsible for coordinating its work with other contractors.

5. If a utility owner fails to comply with any provision of this chapter or any term of a utility accommodation permit, the Department may place pending and future permits on hold until the issue is resolved.

6. The Department shall deny issuance of a permit if it determines there is insufficient room for additional utility facilities in the right-of-way.

7. County approval of the permit application is required if the utility will impact a county road connection.

8. When city and county approvals are required, they must be obtained by the applicant before the permit application is submitted to the Department.

9. The utility owner is responsible for obtaining all necessary approvals from the appropriate agencies when it will discharge materials into the nation's waterways. The Department will not issue a permit until these approvals are obtained.

10. When a utility facility is transferred or leased, the transferee or lessee must contact the district representative and provide its name and address, the geographical area involved in the transaction, and the designated telephone number for notification purposes.

11. For nonfreeway primary highways, the Department may permit longitudinal placement of a natural gas line with an operating pressure that is greater than 150 pounds per square inch if a suitable alternate location cannot be found.

12. A utility owner must submit a notice to the Department within 90 days after it abandons or removes a utility facility that occupies the primary highway right-of-way.

Revisions include the following:

1. The Department is no longer obligated to furnish signs necessary to conduct primary highway traffic through the utility construction or repair area. The utility owner is responsible for providing signs.

2. For utility facility attachments to bridges, Department-approved clamps must be used for any attachments to structural steel. The current rules prohibit attachments to structural steel.

3. For transverse occupancies, the Department may require encasement of communication cable. The current rules require encasement from toe of foreslope to toe of foreslope except when cable is buried directly.

4. Gravity flow lines installed prior to highway construction must be encased. The current rules do not require encasement if the lines meet certain requirements.

5. The Department may require multiduct systems for either longitudinal or transverse occupancies. The current rules address multiduct systems for only longitudinal freeway occupancies.

6. When pavement is removed, the minimum width of the cut is six feet. The current rules specify that the minimum cut is the required trench width plus 12 inches on each side.

7. Boring or jacking pits within the clear zone must be protected at all times. The current rules require the closure of these pits at night.

8. A performance bond for longitudinal occupancy of freeway right-of-way shall be in force for the duration of the construction, and the Department shall have the right to file a claim against the bond for two years thereafter. Current language provides for release of the bond once the Department accepts the project. The bond amount, $100,000, is unchanged.

9. The minimum vertical clearance for all overhead utility facilities is 20 feet. A provision that allowed an 18-foot vertical clearance for service connections was deleted.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: julie.fitzgerald@dot.state.ia.us.

5. Be received by the Director's Staff Division no later than August 26, 2003.

A meeting to hear requested oral presentations is scheduled for Thursday, August 28, 2003, at 10 a.m. in the Administration Building, First Floor, South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed rules may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Director's Staff Division at the address listed in this Notice by September 8, 2003.

These rules are intended to implement Iowa Code chapters 306A and 319, section 314.20, and sections 320.4 to 320.8.

Proposed rule-making action:

Rescind Chapter 115, "Utility Accommodation," and adopt the following **new** chapter:

CHAPTER 115
UTILITY ACCOMMODATION

761—115.1(306A) General information.

115.1(1) Scope of chapter. This chapter covers initial placement, adjustment and maintenance of utility facilities in, on, above or below the right-of-way of primary highways, including attachments to primary highway structures. It embodies the basic specifications and standards needed to ensure the safety of the highway user and the integrity of the highway.

115.1(2) Waivers. The department may, upon its own motion or in response to a written request or petition, waive provisions of this chapter. 761—Chapter 11 applies, with the following exceptions:

a. If a person is applying for a utility permit under this chapter, the person shall submit a related waiver request as an addendum to the application, in lieu of petition for waiver. The request must include:

(1) The specific waiver requested.

(2) The relevant facts and reasons the applicant believes will justify the waiver, if they have not already been provided to the department in the application.

(3) The names of persons who may be adversely impacted by the grant of the waiver, if known.

b. In all other cases, a person requesting a waiver shall submit a petition for waiver in accordance with 761—11.5(17A). The petition shall be submitted to the district engineer.

c. Waivers may be granted or denied by the district engineer.

TRANSPORTATION DEPARTMENT[761](cont'd)

d. A waiver request or petition that is denied may be resubmitted to the director of transportation. The director's decision is final agency action.

115.1(3) Additional requirement for waivers involving interstate highways. The department shall not waive these rules in utility accommodation and adjustment situations involving the interstate highway system, including its ramps, without the approval of the Federal Highway Administration.

115.1(4) Contact information. Information and forms regarding this chapter may be obtained from any of the department's six district offices or from the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—115.2(306A) Definitions.

"Adjustment" means a physical change to an existing utility facility including improvement, rearrangement, reinstallation, protection, relocation or removal of the utility facility.

"Agreement" means a contract between the department and a utility owner.

"Appurtenance" means a utility facility-related feature such as a vent, drain, utility access or marker.

"Backfill" means placement of suitable material and compaction of the material as specified in these rules.

"Breakaway" means designed to shatter, bend easily or separate from a solid foundation.

"Cable" means an insulated conductor or a combination of insulated conductors.

"Carrier" means a pipe directly enclosing a transmitted fluid (liquid or gas) or slurry. "Carrier" also means an electric or communication cable, wire or line.

"Casing" means an oversize load-bearing pipe, conduit, duct, or structure through which a carrier or cable is inserted.

"Cell" means a conduit.

"Clear zone" means that roadside border area, starting at the edge of the traveled way, available for use by errant vehicles.

"Communication line" or "communication cable" means a circuit for telephone, telegraph, alarm system, television transmission or traffic control purposes.

"Conduit" means an enclosed tubular runway for protecting wires or cables. A conduit may also be referred to as a "cell" or "duct."

"Cover" means depth from the grade of a roadway or ditch to the top of an underground utility facility.

"District representative" means a department employee who processes utility accommodation requests in an assigned geographical area.

"Duct" means a conduit.

"Emergency" means an unplanned situation that presents a danger to the life, safety or welfare of motorists, persons working within the right-of-way or the general public and that requires immediate attention. The emergency may be the result of storm damage and may involve disruption of utility service to customers. Work on a utility facility due to an emergency is unplanned work and may be necessary at any time of the day or night. The emergency work operation usually involves a small crew and a work vehicle for a short period of time.

"Encasement" means placing a casing around a utility facility.

"FHWA" means the Federal Highway Administration.

"Foreslope" means the sloping surface of an embankment, ditch, or borrow pit of which the downward inclination is away from the traveled way.

"Freeway" means a fully controlled access primary highway. The rights of ingress and egress from abutting properties have been legally eliminated by the department. Permanent access to the highway is allowed only at interchange locations. A freeway is generally five or more miles in length.

"Highly energized" means an electrical energy level that could be hazardous if the utility facility is struck or exposed. For purposes of this chapter, voltage exceeding 60 volts is considered to be highly energized.

"Highway," "street" or "road" means a public way for the purpose of vehicular travel, including the entire area between the right-of-way lines.

"Interchange" means a system that provides for the movement of traffic between intersecting roadways via one or more grade separations.

"Maintenance" as the term is used in conjunction with a utility facility means any repair or replacement of the utility facility that is not an adjustment and that does not increase the capacity of the original installation. The term "maintenance" when used in conjunction with a highway means repair or other operational activities performed by the department within the highway right-of-way to preserve the function of the highway and its structures.

"Median" means that portion of a divided highway separating traffic moving in opposite directions.

"Multiduct" means a system comprised of two or more conduits.

"MUTCD" means the Manual on Uniform Traffic Control Devices, as adopted in 761—Chapter 130.

"Nonfreeway primary highway" means a primary highway that is not a freeway.

"Occupy the primary highway right-of-way" means located or to be located in, on, above or below the primary highway right-of-way. The term includes attachments to primary highway structures.

"Pavement" means that portion of a roadway used for the movement of vehicles, excluding shoulders.

"Permit" means a utility accommodation permit issued by the department. The term "permit" includes any attachments to the permit.

"Pipe" means a tubular product used to transport solids, liquids or gases.

"Pipeline" means a carrier system used to transport liquids, gases, or slurries.

"Plowing" means the installation of a utility line in the ground by means of a plow-type mechanism that breaks the ground, places the utility line and closes the break in the ground in a single operation.

"Primary highway" means a road or street designated as a "primary road" in accordance with Iowa Code subsection 306.3(6). This definition includes primary highway extensions in cities and primary highways under construction.

"Right-of-way" means the land for a public highway, street or road, including the entire area between the property lines. For purposes of this chapter, the right-of-way line for a freeway is the access control line.

"Roadway" means that portion of a highway used for the movement of vehicles, including shoulders and auxiliary lanes. A divided highway has two or more roadways.

"Rural-type roadway" means a roadway that does not have as its outside extremities a curb and gutter section.

"Service connection" means a water, gas, power, communication, sanitary sewer or storm sewer line that extends from the main or primary utility facility into an adjacent property and that is used to serve the property.

"Shoulder" means that portion of a roadway contiguous to the traveled way for the accommodation of disabled vehicles, for emergency use and for the lateral support of the pavement base and surface courses.

"Toe of foreslope" means the intersection of the foreslope and the natural ground or ditch bottom.

"Traveled way" means that portion of a roadway used for the movement of vehicles, excluding shoulders and auxiliary lanes.

"Trenched" means installed in a narrow open excavation.

"Trenchless" means installed without breaking the ground or the pavement surface, such as by jacking, boring, tunneling or mechanical compaction.

"Urban-type roadway" means a roadway that has as its outside extremities a curb and gutter section.

"Utility" means a system for supplying water, gas, power, or communications; a storm sewer, sanitary sewer, drainage tile or other system for transmitting liquids; a pipeline system; or like service systems. The term "utility" includes traffic signal systems and street and intersection lighting systems.

"Utility access" means an opening in an underground utility system through which workers or others may enter for the purpose of making installations, inspections, removals, repairs, connections or tests.

"Utility facility" means any pole, pipe, pipeline, pipeline company facility, sewer line, drainage tile, conduit, cable, aqueduct or other utility-related structure or appurtenance. However, the term does not include department facilities or the utility lines that service them.

"Utility owner" means the owner of a utility facility.

"Vent" means an appurtenance used to ventilate or to discharge gaseous contaminants from casings.

761—115.3 Reserved.

761—115.4(306A) General requirements for occupancy of the right-of-way.

115.4(1) Permit required and exceptions to permit.

a. Permit required.

(1) A utility owner shall obtain permission from the department in the form of a utility accommodation permit before it places its utility facilities in, on, above or below the primary highway right-of-way; attaches its utility facilities to a primary highway structure; or adjusts existing utility facilities occupying the right-of-way.

(2) The purpose of the permit process is to ensure the safety of motorists, pedestrians, construction workers and other highway users; to ensure the integrity of the highway; and to document the location of utility facilities for use in managing the highway right-of-way and in locating the facilities in the future.

b. Exceptions to required permit.

(1) A permit is not required for storm sewers, subdrains, and lighting designed and constructed as part of a department highway construction project.

(2) A permit is not required for service connections within the corporate limits of a city. These connections require city approval rather than department approval; the utility owner shall apply to the city. However, service connections shall meet all other requirements of this chapter.

115.4(2) Agreement required. For certain utility facility adjustments, the department may require an agreement between the department and the utility owner. However, the agreement by itself does not constitute a permit nor does it grant permission to occupy the primary highway right-of-way. The utility owner is responsible for obtaining a permit prior to commencing work within the right-of-way. The agreement shall then be attached to and become a part of the permit.

115.4(3) Compliance with requirements. It is the responsibility of the utility owner to ensure that its utility facility complies with all applicable federal, state, local and franchise requirements and meets generally accepted industry standards at the time of installation.

115.4(4) Performance bond. The department may require a performance bond for utility work within the highway right-of-way under the following circumstances: the installation is unusual; abnormal site conditions exist, such as but not limited to unstable soil or unique vegetation; or the utility owner has a history of performance problems. A performance bond is required for longitudinal freeway occupancy; see subrule 115.16(9) for specific requirements.

a. If a performance bond is required, the utility owner shall file the bond with the department prior to commencing work within the right-of-way.

b. The minimum amount of a required performance bond is $5,000 per permit. Depending on the type and extent of the facility installed, the department may require a higher bond amount. The bond shall be in force for the duration of the permit. The department shall have the right to file a claim against the bond for two years thereafter.

c. The department may accept an annual performance bond in the amount of $50,000 for statewide activities in lieu of an individual bond for each permit. The statewide performance bond shall be kept in force for as long as the utility owner's facilities occupy the primary highway right-of-way anywhere within the state of Iowa. The department shall have the right to file a claim against the bond for two years thereafter.

d. A performance bond shall guarantee prompt restoration of any damage that is the result of the utility facility's occupancy of the highway right-of-way.

115.4(5) Execution of work. Utility construction and maintenance work within the primary highway right-of-way shall be executed in a satisfactory manner and in accordance with good construction practices.

115.4(6) Disturbance of other contractors. Utility construction and maintenance work within the primary highway right-of-way shall be accomplished in a manner that minimizes disturbance to any other contractor working within the right-of-way. It is the responsibility of the utility owner to coordinate work with other contractors.

115.4(7) No adverse effect on highway. A utility facility shall not adversely affect the safety, design, construction, operation, maintenance or stability of the present use or future expansion of a primary highway.

115.4(8) Safety, health and sanitation. Construction and maintenance of a utility facility shall be accomplished in a manner that minimizes disruption of primary highway traffic and other hazards to the highway user. The utility owner shall comply with the MUTCD and all applicable federal, state and local statutes, ordinances and regulations governing safety, health and sanitation. The owner shall furnish such additional safeguards, safety devices and protective equipment and shall take such actions as are reasonably necessary to protect the life and health of the public.

115.4(9) Parking or storage in clear zone or median. When not in actual use, vehicles, equipment and materials shall not be parked or stored within the clear zone or median.

115.4(10) Protection of landscaped or planted areas. A landscaped or planted area that is disturbed shall be restored as nearly as practical to its original condition. Specific au-

thorization must be obtained from the district representative prior to trimming trees or spraying within the right-of-way.

115.4(11) Noncompliance. The department may take any or all of the following actions for noncompliance with any provision of this chapter or any term of a permit:

a. Halt utility construction or maintenance activities within the right-of-way.

b. Withhold an adjustment reimbursement until compliance is ensured.

c. Revoke the permit.

d. Remove the noncomplying construction or maintenance work, restore the area to its previous condition, and assess the removal and restoration costs to the utility owner.

e. Place all pending and future permits on hold until the issue is resolved.

115.4(12) Private utility facility. A utility facility that is dedicated to private use shall be accommodated in accordance with this chapter. However, the district representative may, when necessary, allow an exception to the cover requirements of subrule 115.13(1) for tile lines and sewer lines.

115.4(13) Insufficient capacity of right-of-way. The department shall deny issuance of a permit if it determines there is insufficient room for additional utility facilities within the right-of-way.

761—115.5(306A) General design provisions.

115.5(1) Plans. Design plans for a utility facility shall be prepared by a person knowledgeable in highway design and in work zone traffic control and shall include the measures to be taken to preserve the safe and free flow of traffic, structural integrity of the roadway and highway structures, ease of highway maintenance, appearance of the highway and integrity of the utility facility.

115.5(2) Materials. All utility facilities shall consist of durable materials designed for long service life expectancy and be relatively free from routine servicing and maintenance.

115.5(3) Number of crossings. The number of utility facilities crossing the primary highway right-of-way shall be kept to a minimum. The department may require distribution facilities to be installed on each side of the highway to minimize the number of crossings and service connections. In individual cases, the department may require several facilities to cross in a single conduit or structure. Crossings should be as near to perpendicular to the highway alignment as practical.

115.5(4) Aboveground facilities. The design of aboveground utility facilities shall be compatible with the visual quality of the specific highway section being traversed. See rule 115.6(306A).

115.5(5) Clear zone requirements and aboveground obstructions. Highway roadsides shall be as free from physical obstructions above the ground as practical. The department shall determine the clear zone distance.

a. The clear zone distance on rural-type roadways is based on present day traffic and the existing foreslope adjacent to and preceding the utility facility.

b. Unless otherwise specified, the clear zone shall be measured from the edge of the traveled way.

c. In rural areas with rural-type roadways, a permanent, aboveground obstruction is restricted to an area beyond the clear zone or the highway foreslope, whichever area locates the obstruction a greater distance from the edge of the traveled way.

d. If sufficient right-of-way is not available to accommodate the clear zone distance, the department may require the utility facility to have a breakaway design, require regrading of the right-of-way, require the utility facility to be located underground, or authorize the facility to be placed near the right-of-way line.

761—115.6(306A) Scenic enhancement.

115.6(1) Introduction. The type and size of a utility facility and the manner in which it is installed can materially alter the scenic quality, appearance and view of highway roadsides and adjacent areas. For these reasons, additional controls are applicable in areas that have been acquired or set aside for their scenic quality. Such areas may include, but are not limited to, scenic strips, scenic overlooks, rest areas, recreation areas, public parks and historic sites, aesthetically enhanced corridors, and the right-of-way of primary highways that pass through or are adjacent to these areas. These additional controls are addressed in this rule.

115.6(2) Underground installations. The department may permit a new underground installation if it does not require extensive removal or alteration of trees or other natural features visible to the highway user and if it does not impair the visual quality of the area being traversed.

115.6(3) Aboveground installations. The department may permit a new aboveground installation only if the following three conditions are met:

a. Other locations for an aboveground installation are unusually difficult, are unreasonably costly, or are less desirable from the standpoint of visual quality.

b. Underground installation is not technically feasible or is unreasonably costly.

c. The location, design and materials to be used for the proposed aboveground installation will give adequate attention to the visual qualities of the area being traversed.

761—115.7(306A) Liability.

115.7(1) Liability under a permit. The following are conditions of a utility accommodation permit.

a. The owner of the utility facility shall indemnify and save harmless the state of Iowa, its agencies and employees from any and all causes of action, suits at law or in equity, for losses, damages, claims or demands, and from any and all liability and expense of whatsoever nature (including reasonable attorney fees), arising out of or in connection with the owner's use or occupancy of the primary highway right-of-way.

b. The state of Iowa, its agencies or employees, will be liable for expense incurred by the permit holder in its use and occupancy of the primary highway right-of-way only when negligence of the state, its agencies or employees, is the sole proximate cause of such expense. Whether in contract, tort or otherwise, the liability of the state, its agencies, and employees is limited to the reasonable, direct expenses to repair damaged utilities, and in no event will such liability extend to loss of profits or business, indirect, special, consequential or incidental damages.

115.7(2) Reserved.

761—115.8(306A) Utility accommodation permit.

115.8(1) Application for permit.

a. To apply for a utility accommodation permit, the utility owner shall submit an application to the appropriate district representative on a form prescribed by the department.

b. If the utility facility will cross or impact a county road connection, the application must be approved by the county. If the facility is within corporate limits of a city, the application must be approved by the city. The utility owner is responsible for obtaining these approvals prior to submitting the application to the department.

115.8(2) Permit.

a. At a minimum, a utility accommodation permit allows:

(1) The applicant (the utility owner) or its representative to perform the work covered by the permit.

(2) The utility facility described in the permit to occupy the right-of-way.

(3) The utility facility to be operated and maintained.

b. A utility accommodation permit does not convey a permanent right of occupancy.

115.8(3) Plan. Each permit application shall be accompanied by a plan showing the following:

a. Location of the utility facility by route, county, section, township, range, milepost and highway stationing, where these references exist.

b. Highway centerline and right-of-way limits.

c. Location of the utility facility by distance to the nearest foot at each point where the facility's location changes alignment, as measured from the:

(1) Centerline of the highway on nonfreeway installations.

(2) Right-of-way fence on freeway installations.

d. All construction details including the:

(1) Depth of burial.

(2) Types of materials to be used in the installation.

(3) Operating pressures and voltages.

(4) Vertical and horizontal clearances.

(5) Traffic control plan prepared by a person knowledgeable in work zone traffic control, or a reference to a standard traffic control plan of the department.

115.8(4) Discharging into waterways.

a. A permit application for the placement of a utility facility that will discharge materials into the nation's waters must be accompanied by satisfactory evidence of compliance with all applicable federal, state and local environmental statutes, ordinances and regulatory standards.

b. The utility owner is responsible for obtaining all necessary approvals from the appropriate agencies. The department will not issue a permit until these approvals are obtained.

115.8(5) Department action on permit application.

a. The department shall act on the permit application within 30 days after its filing with the appropriate district representative. If an emergency should exist, the department shall act on the application as expeditiously as practical.

b. Failure on the part of the utility owner to provide complete information may result in a delay in the department's taking final action on the application.

115.8(6) Changes to work. Changes in the work as described in the original permit require the prior approval of the department.

115.8(7) Copy of permit at job site. The utility owner or its contractor shall have a copy of the permit on the construction site at all times for examination by highway officials.

115.8(8) As-built plans.

a. Within 90 days after completion of construction, the utility owner shall submit to the district representative an as-built plan or a letter certifying that the actual placement of the utility facility is as described in the original permit.

b. If the utility owner fails to submit the as-built plan or letter within the time required, the department may hire an independent contractor to locate the utility facility and prepare an as-built drawing. All costs associated with this activity are the responsibility of the utility owner.

c. Any costs incurred by the department or its contractors due to incorrect as-built information supplied by the utility owner or deviations in actual placement from that described in the original permit are the responsibility of the utility owner.

115.8(9) Transfer of permit. A new utility accommodation permit is not needed when a utility facility is transferred or leased in its entirety. The requirements of the permit and this chapter remain in force for as long as the utility facility continues to occupy the right-of-way and serve its intended purpose. The transferee or lessee shall submit the following information to the appropriate district representative:

a. The name and address of the transferee or lessee.

b. Geographical area involved in the transaction.

c. Designated telephone number for notification purposes.

115.8(10) Expiration of certain permits. See subrule 115.16(12) for permits covering longitudinal occupancy of freeways.

761—115.9(306A) Traffic protection.

115.9(1) Traffic control for all work.

a. When performing work within the right-of-way, the utility owner is responsible for providing, installing, maintaining and cleaning warning signs and protective devices; removing warning signs and protective devices when the work is complete; and providing flaggers.

b. Flagging operations and the placement of warning signs, protective devices, barricades and channelizing devices shall comply with the MUTCD and department requirements for the protection of the traveling public and workers on the site.

c. Flaggers are required at work sites to stop traffic intermittently as necessitated by work progress or to maintain continuous traffic past a work site at reduced speeds to help protect the work crew. For both of these functions the flagger must, at all times, be clearly visible to approaching traffic for a distance sufficient to permit proper response by motorists to the flagging instructions, and to permit traffic to reduce speed before entering the work site. In positioning flaggers, consideration must be given to maintaining color contrast between the work area background and the flaggers' protective garments.

d. The utility owner shall provide additional protection when special complexities and hazards exist.

115.9(2) Traffic control for construction and maintenance work that is not emergency work.

a. The utility owner is responsible for using the types of traffic controls that are adequate for the nature, location and duration of work, type of roadway, traffic volume and speed, and potential hazards.

b. Where high traffic volumes cause frequent congestion, routine scheduled maintenance and construction should be avoided during hours of peak traffic.

c. Work areas should be occupied for only as long as it is necessary to safely move in, finish the work, remove all utility work signs and move out.

d. Special care should be taken to clearly mark suitable boundaries for the workspace with channelizing devices so that pedestrians and drivers can see the workspace. If any of the traveled lanes are closed, tapers shall be used as required by the MUTCD.

e. Pedestrians should not be expected to walk on a path that is inferior to the previous path. Loose dirt, mud, broken concrete or steep slopes may force pedestrians to walk on the roadway rather than the sidewalk. Repairs (temporary or permanent) to damaged sidewalks should be made quickly. This may include bridging with steel plates or good quality wood supports.

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f. Work areas involving excavations on the roadway should not exceed the width of one traffic lane at a time. The work should be staged and, if needed, approved bridging should be used. The utility owner should fully coordinate this type of activity with the district representative or, in a city, with the city's traffic or public works office.

115.9(3) Traffic control for emergency work.

a. The extent of traffic control used for emergency work may be less than that used for longer-term construction or maintenance. However, the utility owner shall provide for the safety of pedestrians, motorists and workers. It may be necessary for the utility owner to contact local law enforcement officials to assist in securing the safety of the traveling public.

b. The work vehicle should be equipped with an amber revolving light or amber strobe light, portable signs and channelizing devices, and necessary equipment for flagging operations.

761—115.10(306A) Construction responsibilities and procedures.

115.10(1) Permit required before work may begin. The utility owner shall not commence construction work in the primary highway right-of-way until it has received a utility accommodation permit from the department for the work.

115.10(2) Notice of construction. The utility owner shall give the district representative at least 48 hours' prior notice of its intent to start construction within the right-of-way.

115.10(3) Authority of the district representative.

a. The district representative has the authority to resolve any issues or concerns that arise regarding the intent of the permit and compliance therewith, as they relate to the condition of the highway.

b. During the progress of the work, the district representative may approve minor alterations in the plans or character of the work, as they relate to the condition of the highway, that the district engineer deems necessary or desirable to satisfactorily complete the work. Such an alteration is not a waiver of the permit nor does it invalidate any provision of the permit.

115.10(4) Work in progress. The utility owner is responsible for the care and maintenance of partially completed work within the right-of-way. Unless otherwise authorized by the permit or the district representative, all work performed within the right-of-way is restricted to a time frame of 30 minutes after sunrise to 30 minutes before sunset.

115.10(5) Authority of department to inspect and approve.

a. The department may inspect and approve any construction work performed within the right-of-way as it relates to the condition of the highway.

b. The utility owner shall provide reasonable cooperation.

115.10(6) Department inspectors. The department may appoint inspectors to represent the department in the inspection of construction. Inspectors are placed on the job to keep the district representative informed of the progress of the work and the manner in which it is being performed, and to call to the utility owner's attention any infringements of the permit. The inspectors shall not:

a. Modify in any way the provisions of the permit.

b. Delay the work by failing to inspect the work with reasonable promptness.

c. Act as a supervisor for the work or perform any other duties for the utility owner or its contractor.

d. Improperly interfere with the management of the work.

e. Approve or accept any portion of the work on behalf of the department.

115.10(7) Repair and cleanup. Prior to the department's final inspection, the utility owner shall:

a. Upon notification by the department, immediately make any repairs to the right-of-way that are necessary due to the construction work.

b. Remove from the right-of-way all unused materials and rubbish resulting from the work and leave the right-of-way in a clean, presentable condition.

115.10(8) Final inspection.

a. Upon notification by the owner of the utility facility or its authorized representative that the work is complete, the district representative may inspect each item of work included in the permit as it relates to the condition of the highway.

b. If the district representative finds that the work is not in compliance with the permit, the district representative shall provide to the utility owner written notice of the particular defects found. The owner is responsible for remedying these defects in a timely manner.

761—115.11(306A) Vertical overhead clearance requirements.

115.11(1) Conformance to standards. The vertical clearance for overhead utility facilities and the lateral and vertical clearances for bridges shall conform to accepted industry standards as well as applicable codes and regulations.

115.11(2) Minimum vertical clearance. In no event shall the vertical clearance be less than 20 feet above the roadway for all overhead utilities.

761—115.12(306A) Utility facility attachments to bridges.

115.12(1) Electrical power and communication cable attachments.

a. An electrical power or communication cable may be attached to an existing primary highway bridge if the department determines that the attachment is in the best interests of the public. The department may accommodate an electrical power or communication cable attachment in its design for a new bridge if the department determines that the accommodation is in the best interests of the public.

b. The permit application shall include a detailed sketch showing the method of attachment and weights of attachment. A separate permit is required for each bridge.

c. All attachments shall be placed in conduits, pipes or trays; beneath the bridge's floor; and above low steel or masonry of the bridge. Department-approved clamps shall be used for any attachment to structural steel.

d. Expansion devices are required. Cables in cells or casings shall be grounded wherever necessary. Carrier pipe shall be suitably insulated from electrical power line attachments.

e. All costs attributable to the installation of an attachment to a bridge shall be paid by the utility owner unless the attachment is installed pursuant to a utility agreement.

f. Welding or drilling holes in structural steel primary members is prohibited.

g. Utility facilities may be attached to noncritical concrete areas.

h. Holes should not be cut in wing walls, abutments or piers.

115.12(2) Pipeline attachments.

a. Pipelines may be attached to primary highway bridges when installation below ground is not feasible, the design of

the bridge can accommodate the attachment, and space is available.

b. The permit application shall include a detailed sketch showing the method of attachment and weights of attachment. A separate permit is required for each bridge.

c. Pipes shall be placed beneath the bridge's floor, inside the outer girders or beams (or in cells specifically designed for the installation), and above low steel or masonry of the bridge.

d. Pipes shall be designed to withstand expected expansion or contraction forces. If necessary, expansion devices such as expansion joints, offsets or loops shall be used.

e. Pipelines in cells or casings shall be vented and grounded whenever necessary.

f. Pipelines that have an operating pressure of more than 75 pounds per square inch or that are larger than two inches in diameter shall have shutoffs not more than 300 feet from each end of the bridge.

g. The department shall consider casing requirements on an individual basis. In some instances, thicker-walled or extra-strength pipe may be considered in lieu of encasement.

h. All costs attributable to the installation of an attachment to a bridge shall be paid by the utility owner unless the attachment is installed pursuant to a utility agreement.

i. Welding or drilling holes in or attaching to structural steel primary members is prohibited.

j. Utility facilities may be attached to noncritical concrete areas.

k. Holes should not be cut in wing walls, abutments or piers.

l. The utility owner shall provide an indemnity bond to be executed by either itself or by a responsible bonding company, at the department's option.

(1) The indemnifier under the bond shall, in the event of damage resulting from any cause whatsoever arising out of or from permission to attach a pipeline, indemnify the department against all loss or damage to it or any third party therefrom, including but not limited to the expense of repairing or replacing the bridge and the cost of alternate highway facilities for traffic during the period when the bridge is being repaired or replaced.

(2) The indemnity bond shall be kept in force for as long as the pipeline is attached to the bridge. The department may periodically review the amount of the bond and require adjustments in the bond amount.

115.12(3) Attachment fee.

a. The utility owner shall pay to the department an attachment fee for attaching its utility facility to a primary highway bridge. The attachment fee is $100 per bridge plus $0.55 times the weight of the attachment in pounds per foot times the length of bridge in feet. The fee shall increase 3 percent per year after the base year of 2004.

b. The attachment fee is due before any construction work commences within the right-of-way.

c. Utility facilities belonging to or exclusively serving a city may, if the department considers it desirable, be attached to a primary highway bridge without assessment of an attachment fee.

115.12(4) Engineering fee. When a primary highway bridge is in the planning stages and the department designs the bridge to accommodate a requested attachment, the department shall assess to the utility owner an engineering fee. The engineering fee shall reimburse the department for the department's increased costs of design, construction and inspection due to the attachment. The department shall bill the fee to the utility owner when the department's work is complete.

115.12(5) Utility attachments to freeway border bridges. The department may permit a utility facility to be attached to an existing or planned freeway border bridge if the following conditions are met:

a. The appropriate state agency of the adjoining state approves the attachment.

b. Except for communication cable, the facility exits the freeway right-of-way as soon as physically practical after crossing the state line into Iowa.

c. The attachment otherwise complies with this chapter, specifically including this rule on attachments and rule 115.16(306A) on longitudinal freeway occupancy.

761—115.13(306A) Underground utility facilities.

115.13(1) Depth requirements.

a. Minimum cover—roadway. The minimum required cover under a roadway is 48 inches.

b. Minimum cover—other portions of right-of-way. The minimum required cover under other portions of the right-of-way is:

(1) 48 inches for electrical cable.

(2) 30 inches for communication cable except that 36 inches is required for longitudinal occupancy under freeway right-of-way.

(3) 36 inches for all other underground facilities.

c. Rocky terrain. The department may allow an exception to the minimum depth requirement where rocky terrain makes it difficult to obtain the required depth. The department shall determine the minimum depth in these situations; however, no installation shall be authorized with less than 24 inches of cover.

d. Other protective measures. In critical situations where the necessary cover cannot be obtained, the department may approve other protective measures.

115.13(2) Measurement of cover. The cover is measured from one of the following:

a. On rural-type roadways, the lowest pavement surface edge.

b. On urban-type roadways, the gutter flow line, excluding local depressions at inlets.

c. Where longitudinal installations will be behind the curb, the top of the curb.

d. The surface of the surrounding ground or the low point of the ditch.

115.13(3) Casing. A casing shall:

a. Protect the highway from damage.

b. Protect the carrier pipe from external loads or shock, either during or after construction of the highway.

c. Convey leaking liquids or gases away from the area directly beneath the traveled way.

d. Provide for repair, removal and replacement of the utility facility without interference to the highway.

115.13(4) Seals. Casing pipe shall be sealed at both ends with a suitable material to prevent water or debris from entering the annular space between the casing and the carrier, in accordance with generally accepted industry standards.

115.13(5) Transverse occupancy—encasement and related requirements.

a. Trenchless construction. Underground transverse crossings of existing paved roadways shall be made by trenchless construction whenever practical. Any exception to this requirement must be specifically authorized by the district representative and noted in the permit.

b. Electrical service. Underground electrical service must be placed in a conduit from right-of-way line to right-

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of-way line and shall be clearly marked by the utility owner at the outer limits of the right-of-way.

c. Pipelines.

(1) Except as set out in 115.13(5)"c"(2), a pipeline carrying natural gas at an operating pressure of greater than 60 pounds per square inch, liquid petroleum products, ammonia, chlorine or other hazardous or corrosive products shall be encased from right-of-way line to right-of-way line.

(2) Encasement of a pipeline carrying a product listed in 115.13(5)"c"(1) is not required if the pipeline meets all of the following requirements and the utility owner certifies as a part of the permit that these requirements are met:

- It is welded steel pipeline.
- It is cathodically protected.
- It is coated in accordance with accepted industry standards.
- It complies with federal, state and local requirements and meets accepted industry standards regarding wall thickness and operating stress levels.

(3) A pipeline carrying a product listed in 115.13(5)"c"(1) shall be vented and marked at the outer right-of-way limits. The markers shall comply with accepted industry standards and include the following information: name and address of the owner, telephone number to contact in case of an emergency, and type of product carried.

(4) Encasement of a natural gas pipeline with an operating pressure that is not greater than 60 pounds per square inch is not required if the pipeline is made of copper, steel or plastic; the pipeline is protected and installed in accordance with accepted industry standards; and the utility owner certifies as a part of the permit that these standards are met. Otherwise, encasement is required.

d. Communication cable. The department may require encasement of communication cable.

e. Sanitary sewer lines. Sanitary sewer lines, both gravity and force mains, shall be encased from right-of-way line to right-of-way line. Exception: A gravity flow line that is installed subsequent to highway construction need not be encased if it will meet all of the following requirements:

(1) The opening is cut to the size of the carrier pipe so that there are no excessive voids around the pipe.

(2) The pipe is of sufficient strength to withstand the external loads created by the vehicular traffic on the roadway being traversed.

(3) Lines beyond the toe of foreslope are properly embedded.

f. Waterlines. Waterlines shall be encased from right-of-way line to right-of-way line. Exceptions:

(1) Encasement is not required where it is impractical due to existing conditions, as determined by the district representative. As a minimum, waterlines shall be encased from toe of foreslope to toe of foreslope.

(2) Waterlines with an inside diameter of two inches or less need be encased only from toe of foreslope to toe of foreslope. Venting and sealing of the encasement are not required.

(3) Properly embedded waterlines that are installed prior to highway construction need not be encased if extra strength cast iron or ductile iron pipe with mechanical joints and seals, or equivalent, is used from right-of-way line to right-of-way line.

g. Installations vulnerable to damage. Utility facilities that by reason of shallow depth or location are vulnerable to damage from highway construction or maintenance operations shall be protected with a casing, suitable bridging, concrete slabs or other appropriate measures.

h. Other installations. When it is acceptable to both the utility owner and the department, an underground utility facility not otherwise addressed in this subrule may be installed without protective casing if the installation involves trenched construction or small bores. Encasement requirements will be determined on an individual basis.

115.13(6) Longitudinal occupancy—encasement and related requirements.

a. Utility lines installed longitudinally to the primary highway right-of-way shall be encased at crossings of hard-surfaced side roads, streets and entrances in accordance with subrule 115.13(5).

b. Reserved.

115.13(7) Multiduct systems. The department may require installation of a multiduct system to be shared with others. Details of the installation are subject to department approval.

a. The department shall designate a "lead company" for the system. The lead company is generally the first utility owner requesting occupancy. The lead company is responsible for:

(1) Design and construction of the multiduct system.

(2) Maintenance of the multiduct system.

(3) Providing all capital required to construct the multiduct system.

b. Once a multiduct system has been established, the department shall require future occupancies to be located within one of the unoccupied inner ducts of the system. If all inner ducts are occupied, the department may require the establishment of an additional multiduct system.

c. Each occupant of a multiduct system shall share equally in the entire capital costs of the facility. As each new occupant is added to an existing system, the department shall require the new occupant to pay its proportionate share based on the number of inner ducts it occupies.

d. See subrule 115.16(8) for occupancy fees for longitudinal installations on freeways.

115.13(8) Procedures for backfilling trenched construction and jacking or boring pits.

a. When a carrier, pipe, conduit, or cable is placed by trenched construction, the backfill shall be placed and compacted so that there is no settlement or erosion. If settling or erosion of a trench is observed, it is the responsibility of the utility owner to correct the problem.

b. Jacking or boring pits shall be backfilled in the same manner as that described in paragraph "a" of this subrule.

c. Backfill under roadways or entrances shall be of a suitable material to minimize settlement. Examples of suitable material include granular backfill or flowable mortar.

115.13(9) Procedures for trenchless construction.

a. When trenchless construction techniques are used, the bore shall be as small as practical and in no case more than four inches larger than the facility or casing inserted.

b. Grout backfill is required for all unused holes and abandoned pipes. Grout or sand backfill is required for any borehole more than two inches larger than the installed casing or other facility. All bored facilities shall be constructed in such a manner that surface water is not transported to or otherwise allowed access to groundwater.

115.13(10) Procedures for pavement removal.

a. When the existing pavement must be cut to accommodate a utility installation, the cut shall be made with a concrete saw.

b. The width of the pavement removal shall be a minimum of six feet. If the distance from the specified cut to any adjacent longitudinal or transverse joint or crack is less than

four feet, the pavement shall be removed to that joint or crack.

c. The district representative shall make the final determination on the required depth and width of cut.

115.13(11) Procedures for pavement replacement.

a. Restoration of pavement shall be accomplished in accordance with methods approved by the district representative.

b. The district representative may authorize temporary repair with bituminous material.

c. A permanent patch shall be placed as soon as conditions permit.

115.13(12) Clear zone for pits.

a. On freeways, jacking or boring pits are not allowed within the median. A jacking or boring pit shall be located in an area beyond the clear zone or the highway foreslope, whichever area locates the pit a greater distance from the edge of the traveled way, right-of-way width permitting.

b. On rural-type, nonfreeway primary highways, jacking or boring pits are not allowed within the median. A jacking or boring pit shall normally be located in an area beyond the clear zone or the highway foreslope, whichever area locates the pit a greater distance from the edge of the traveled way, right-of-way width permitting. However, a jacking or boring pit may be allowed within the foreslope if it is specifically authorized by the district representative and noted in the permit.

c. On urban-type, nonfreeway primary highways, jacking or boring pits should be located at least two feet back from the curb.

d. Jacking or boring pits authorized within the clear zone shall be protected at all times. Protection may include backfilling of the pit, temporary barrier rail, reflective fence, or other measures. All measures must be approved by the district representative.

115.13(13) Construction methods. Casing and pipeline installations shall be accomplished by dry boring, tunneling, jacking, trenching, directional drilling or other approved methods.

a. The use of water under pressure (jetting) or puddling to facilitate boring, pushing or jacking operations is not allowed.

b. However, a boring operation that requires the use of water only to lubricate the cutter and pipe is considered dry boring and is allowed.

115.13(14) Encasement material. It is the responsibility of the utility owner to ensure that it complies with all applicable federal, state, local and franchise requirements and meets generally accepted industry standards in the selection of encasement materials.

761—115.14(306A) Freeways.

115.14(1) Access to utility facilities occupying freeway right-of-way.

a. Except for emergency work, access shall not be obtained from the freeway or its ramps during utility construction or maintenance operations. This means that access must be obtained from intersecting, adjacent or nearby public highways, streets, roads or trails or from private property. See subrules 115.9(3) and 115.19(2) for emergency work.

b. Fence removal and replacement are subject to the limitations imposed by the permit.

c. No gates or ladders shall be placed in or upon the right-of-way fence.

d. The department shall notify the FHWA of any access it authorizes to the interstate system for utility work.

115.14(2) Freeway clear zone requirements. The clear zone requirements of subrule 115.5(5) apply to freeways. In addition:

a. On freeways open to traffic, personnel, equipment or materials are not allowed in the median or within the clear zone area, right-of-way width permitting, during utility facility construction or maintenance operations, except for the stringing of transverse overhead conductors.

b. In the interest of safety and when considered advisable, the district representative may authorize the placement of temporary poles in the median during cable or conductor stringing operations.

115.14(3) Aboveground appurtenances. Unless otherwise provided, aboveground appurtenances are not allowed within the right-of-way of freeways.

115.14(4) Existing facilities.

a. A utility facility occupying land that subsequently becomes freeway right-of-way may remain within the right-of-way if the facility:

(1) Can be accessed from other than the freeway or its ramps.

(2) Does not adversely affect the safety, design, construction, operation, maintenance or stability of the freeway.

b. If these conditions are not met, the facility shall be relocated.

761—115.15(306A) Transverse installations on freeways.

115.15(1) Interchange areas.

a. Utility facilities are not allowed within the interchange area of intersecting freeways unless they are highway-related.

b. In other interchange areas, the department may permit occupancy if access to the utility facility can be obtained from other than the freeway or its ramps. If a utility facility cannot reasonably be accessed from an intersecting, adjacent or nearby public highway, street, road or trail, the utility facility shall be installed on private property outside the interchange area.

115.15(2) Aboveground installations.

a. Poles, guys and other supporting structures and related aboveground facilities should be located outside the freeway right-of-way. A single span shall be used to cross the freeway where the width of freeway right-of-way permits.

b. Within interchange areas:

(1) Single-pole construction shall be used, with the number of poles kept to a minimum.

(2) Overhead lines shall be constructed on tangent, parallel to the intersecting road, without guys or anchors being placed in the areas between the ramps and the main roadways of the freeway. Guy poles shall be located as near to the freeway right-of-way line as practical.

(3) Poles should be located as close to the toe of foreslope of the intersecting road as practical, but shall remain outside the clear zone.

(4) Poles should be located as far from the main roadways and ramps of the freeway as practical. No poles are allowed within the median or within the clear zone along the ramp pavement and the freeway pavement.

(5) The use of self-supporting poles or towers, double arming and insulators, breakaway devices and dead-end construction should be considered.

115.15(3) Encasement requirements. Underground facilities crossing the freeway shall be encased from right-of-way-line to right-of-way line. Exception: Encasement of a pipeline carrying natural gas at an operating pressure of greater than 60 pounds per square inch, liquid petroleum

products, ammonia, chlorine or other hazardous or corrosive products is not required if the pipeline meets the requirements of subparagraph 115.13(5)"c"(2).

761—115.16(306A) Longitudinal installations on freeways.

115.16(1) Type of installation permitted.

a. The department may permit the installation of an underground utility facility if, in addition to complying with other provisions of this chapter, the facility specifically complies with this rule.

b. Except as provided in this rule, no aboveground installations other than those needed to serve highway facilities are allowed.

115.16(2) Prohibitions on longitudinal occupancy.

a. A utility facility shall not be used for transmitting gases or liquids or for transmitting products that are flammable, corrosive, expansive, highly energized or unstable.

b. A utility facility shall not present a hazard to life, health or property if it fails to function properly, is severed or is otherwise damaged.

c. No direct service connection to adjacent properties is allowed.

d. No utility facility is allowed in or on a structure carrying a freeway roadway or ramp, except for freeway border bridges, as provided in subrule 115.12(5).

115.16(3) Minimal maintenance. Once installed, the utility facility shall require minimal maintenance.

115.16(4) Location and depth. The utility facility shall be located on uniform alignment, preferably within eight feet of the freeway right-of-way line, and at a location approved by the department.

a. See subrule 115.13(1) for minimum depth requirements.

b. Except for multiduct systems, borings and isolated locations as determined by the department, cable shall be installed by the plowing method.

c. Utility accesses and splice boxes may be placed below the existing ground line. The location and number of installations are subject to department approval.

115.16(5) Identification signs, pedestals and repeater stations.

a. The utility owner shall place identification signs within 12 inches of the right-of-way fence, at the line of sight, along the entire occupancy route. These signs shall identify the owner/operator's name, telephone number to contact in case of an emergency, and the type of buried utility.

(1) The signs shall be composed of an ultraviolet-resistant material.

(2) Each sign shall be no larger than 200 square inches.

(3) The interval between signs shall not exceed one-quarter mile in rural areas and 500 feet in urban areas, or as designated by the department.

(4) Additional signs shall be placed on each side of a public highway, road or street intersecting or crossing the freeway at points where the freeway right-of-way line intersects the public highway, road or street right-of-way line.

(5) The utility owner is responsible for installing and maintaining these identification signs.

b. Aboveground pedestals are permissible. Pedestals should be placed one foot from the right-of-way fence. The number of installations is subject to department approval.

c. Repeater stations are not allowed in the right-of-way.

115.16(6) Metallic warning tape. Metallic warning tape shall be installed a minimum of 12 inches below the existing grade and above the utility installation to facilitate locating the installation in the future.

115.16(7) Engineering. The utility owner shall retain the services of a licensed, professional engineer.

a. The engineer is responsible for overseeing continuous on-site inspection of the installation of the facility including all provisions pertaining to access to the work site and traffic control.

b. Upon completion of the project, the engineer shall certify to the department on the appropriate forms that the installation, traffic control, and access to the work site were accomplished in accordance with the permit.

c. Any change to the alignment as described in the original permit requires the prior approval of the department and the submission of as-built plans.

115.16(8) Occupancy fee. The utility owner shall pay to the department an annual fee for longitudinal occupancy of the freeway right-of-way. The initial fee is due before any construction work commences within the right-of-way.

a. Unless otherwise specified, the annual fee shall be as follows:

(1) When a multiduct system is required by the department: flat fee of $14,500 per cable installation or $7,250 per mile of cable, whichever is greater. These fees shall increase 3 percent per year after the base year of 2004.

(2) All other installations: flat fee of $12,000 per cable installation or $2,500 per mile of cable, whichever is greater. These fees shall increase 3 percent per year after the base year of 2004.

b. When the department requires the installation of a multiduct system, the department may enter into an agreement with the lead company for a discounted fee payment schedule to be in effect until the company has recovered all or an agreed upon portion of its cost of installing the system. Subsequent occupants of the multiduct system shall pay the full annual fee.

c. The department may negotiate an annual fee for occupancy dedicated solely to state government use.

115.16(9) Performance bond. The utility owner shall file a performance bond with the department prior to commencing work within the freeway right-of-way.

a. The bond shall be in the amount of $100,000 per permit and shall guarantee prompt restoration of any damage caused during the installation of the utility facility.

b. The bond shall be in force for the duration of the construction. The department shall have the right to file a claim against the bond for two years thereafter.

115.16(10) Insurance.

a. The utility owner shall maintain the following insurance for bodily injury, death and property damage arising out of or in connection with the construction, maintenance and operation of the facility:

(1) General public liability insurance with limits of not less than $500,000 for injury to or death of a single person, or not less than $1,000,000 for any one accident, and not less than $250,000 per accident for property damage.

(2) Comprehensive automobile liability insurance with limits of not less than $500,000 for injury to or death of a single person, or not less than $1,000,000 for any one accident, and not less than $250,000 per accident for property damage.

(3) Excess liability coverage with limits of not less than $5,000,000.

(4) Statutory workers' compensation coverage.

b. This insurance shall be in effect before the utility owner commences any work within the freeway right-of-way.

c. Coverage may be provided by blanket policies of insurance covering other property or risks.

d. The department shall be named as an additional insured party in the general public liability and excess liability insurance policies.

115.16(11) Future adjustment.

a. As a condition of the permit, the utility owner shall agree to waive all future rights to be reimbursed for adjustment costs incurred should maintenance or construction of the freeway system require adjustment of the utility facility.

b. Should adjustment of the utility facility be required, the department makes no assurance nor assumes any liability to the utility owner that the facility will again be allowed to occupy the freeway right-of-way.

115.16(12) Term of permit. The term of the permit shall not exceed 20 years. When the permit expires, the department may extend it in writing or renegotiate its terms.

115.16(13) Utilities for highway facilities. Longitudinal occupancy of utility facilities that service highway-related facilities are permissible upon such terms and conditions as the department may determine.

761—115.17(306A) Nonfreeway primary highways.

115.17(1) Clear zone requirements and aboveground obstructions. Subrule 115.5(5) applies. In addition:

a. In urban areas with rural-type roadways and speed limits of 45 miles per hour or lower, a permanent, aboveground obstruction shall be located at least 15 feet from the edge of the paved traveled way or beyond the highway foreslope, whichever location is farther from the traveled way.

b. On urban-type roadways, the face of a permanent, aboveground obstruction shall be located no closer than ten feet from the back of the curb. In areas with parking or auxiliary lanes, aboveground obstructions shall be located no closer than two feet behind the back of the curb or a minimum of ten feet from the edge of the traveled way, whichever location is farther from the traveled way.

c. In rural areas with rural-type roadways, poles, guys and other supporting structures and related aboveground facilities should be located as near to the right-of-way line as practical.

(1) These aboveground obstructions shall be located in an area beyond the clear zone or the highway foreslope, whichever area locates the obstruction a greater distance from the edge of the traveled way, right-of-way width permitting.

(2) In individual cases, the department may require the use of self-supporting poles or towers, double arming and insulators, breakaway devices and dead-end construction.

d. In suburban areas with rural-type roadways and speed limits of 45 miles per hour or lower, utility poles shall be located at least 15 feet from the edge of the paved traveled way or beyond the highway foreslope, whichever location is farther from the traveled way. The preferred location is near the right-of-way line.

e. Poles, guys, anchors and other appurtenances shall not be located in ditches, at drainage structure openings or on roadway shoulders. All poles, guys, anchors and other appurtenances shall be located to minimize interference with the maintenance operations of the department.

f. The district representative may approve the adjustment of minimum setback distances for poles and other appurtenances that have a breakaway design.

115.17(2) Reserved.

761—115.18(306A) Longitudinal installations on nonfreeway primary highways.

115.18(1) Location. Longitudinal utility facility installations should be located on uniform alignment as near as practical to the right-of-way line so as to provide a safe environment for traffic operations and to preserve space for future highway improvements and other utility installations.

115.18(2) Underground installations.

a. No carrier of flammable, corrosive, expansive or unstable material shall be placed longitudinally within the right-of-way of a nonfreeway primary highway. Exceptions:

(1) A natural gas line with an operating pressure that is no greater than 150 pounds per square inch is permissible.

(2) The department may permit the placement of a natural gas line with an operating pressure that is greater than 150 pounds per square inch only if a suitable alternate location cannot be found.

b. On rural-type roadways, utility facilities shall be located in an area beyond the highway foreslope, right-of-way width permitting, except at locations where this is not acceptable, such as deep ravines or ditches.

c. On urban-type roadways, utility facilities should be located as near to the right-of-way line as practical and preferably not within the traveled way. A utility access placed within the right-of-way shall not protrude above the surrounding surface.

d. In general, utility facilities are not allowed in the median. However, in special cases the district representative may approve such an installation.

761—115.19(306A) Maintenance and emergency work.

115.19(1) Maintenance responsibilities. The owner of a utility facility is responsible for its maintenance. The owner shall:

a. Maintain the facility in a good state of repair in accordance with applicable federal, state and local statutes, ordinances and regulatory standards.

b. Replace and stabilize all earth cover and vegetation where they have eroded over an underground utility facility when the erosion is due to or caused by the placement or existence of the facility.

c. Give the department's district representative 48 hours' prior notice of its intent to perform predictable routine maintenance within the right-of-way. Exception: Notice is not required if the predicable routine maintenance is for a service connection located beyond the clear zone of a nonfreeway primary highway.

115.19(2) Utility emergency work.

a. Access to the worksite is permissible from the freeway roadways and ramps when an emergency exists.

b. The utility owner shall take all necessary, appropriate and reasonable measures to protect the safety of the traveling public and cooperate fully with the state highway patrol and the department in completing the emergency work.

c. The utility owner shall notify the department of the emergency as soon as practical, describing the steps being taken to protect the traveling public, the extent of the emergency, and the steps being taken to address the emergency.

d. If the nature of the emergency is such that it interferes with the free movement of traffic, the utility owner shall immediately notify the state highway patrol and the department.

e. When an emergency occurs on the interstate system, the department shall notify the FHWA as soon as practical, describing the steps being taken to protect the traveling public and the steps being taken to address the emergency.

115.19(3) Department emergency work. There will be times when the department performs highway-related emergency work. Examples include but are not limited to stop sign replacement, handling hazardous material spills, and addressing natural disasters and acts of terrorism. If utility facilities are affected, the department shall as soon as practical

notify the utility owner of the emergency condition and what steps are necessary to protect the utility facility.

761—115.20(306A) Abandonment or removal of utility facilities.

115.20(1) Notice to department. Within 90 days after the abandonment or removal of all or a portion of an existing utility facility that occupies that primary highway right-of-way, the utility owner shall submit a written notice of abandonment or removal to the department. The notice shall include:

a. Type of facility.

b. Location of the utility facility by route, county, section, township, range, milepost and highway stationing, where these references exist.

c. Name of the original utility owner if different than the current owner.

d. Original utility permit number and date of approval, if known.

115.20(2) Reserved.

761—115.21 to **115.24** Reserved.

761—115.25(306A) Utility facility adjustments for highway improvement projects. Rules 115.26(306A) to 115.30(306A) establish administrative procedures for utility facility adjustments made necessary by state highway improvement projects. The purpose of these procedures is to adjust utility facilities with minimal delays or added expense. Rules 115.26(306A) to 115.30(306A) apply to all state highway improvement projects with the following exceptions:

1. Projects the department develops on an accelerated schedule.

2. Projects with no anticipated utility adjustments.

115.25(1) Should the department be responsible for the cost of a utility facility adjustment required for highway work, the department shall not pay for any betterment that results in an increase in the capacity of the facility or for any other adjustment not required by highway construction. The department is entitled to receive credit for the accrued depreciation on replaced facilities and the salvage value of any materials or parts salvaged and retained or sold by the utility owner.

115.25(2) Adjustment costs for which the department is responsible shall be paid on a cost reimbursement basis.

115.25(3) If adjustment of an existing utility facility occupying the right-of-way is required due to highway construction, the utility owner shall adjust the facility without cost to the state and, whenever possible, in advance of the highway work.

761—115.26(306A) Notice of project.

115.26(1) Determining affected utilities. The department shall make a reasonable effort to determine what utility facilities are located within the project limits of a state highway improvement project by researching permit files, through field investigations or contacts with one-call locating services, and through contacts with local government units.

115.26(2) Notifying utilities. The department shall identify by name the owner of each known utility facility that is located within the project limits. The department shall send to each utility owner a notice of the improvement project, including the route number of the highway, the geographical limits of the project and a general description of the highway work to be done.

115.26(3) Responding to notice. The utility owner shall:

a. Within seven calendar days after the date of the notice, reply to the department, acknowledging receipt of the notice.

b. Within 90 calendar days after the date of the notice, provide to the department information about its utility facilities that are in the vicinity of the improvement project, including the name of any company that has utility facilities which coexist with the utility owner's facilities. The utility owner shall reply regardless of whether or not it has facilities in the project's vicinity.

761—115.27(306A) First plan submission, preliminary work plan and agreement.

115.27(1) First plan. The department shall submit its first plan to the owner of each known utility facility within the project limits. The first plan shall contain information the owner needs in order to design and lay out the adjustment of its utility facilities, including the placement of adjusted or additional facilities, within the project limits.

115.27(2) Preliminary work plan. Within 90 calendar days after the date the department submits its first plan, the utility owner shall provide to the department a preliminary work plan.

a. The preliminary work plan shall include the following:

(1) A narrative description of what work the utility owner will do.

(2) A drawing showing the present and proposed locations of the utility owner's facilities in relation to the highway plan.

(3) Whether the work is dependent on work by another utility owner.

(4) Whether the work can be done prior to highway construction or must be coordinated with the highway contractor.

(5) The number of working days required to complete the work.

(6) A list of permits and approvals the utility owner is required to obtain from governmental agencies and railroad companies for the work, and the expected time schedule to obtain them.

b. If the utility adjustment work is reimbursable, the utility owner shall submit with the preliminary work plan the following:

(1) Copies of documents verifying real estate interests.

(2) A detailed cost estimate for the adjustment, including appropriate credits for betterments or salvage.

115.27(3) Department review of preliminary work plan. The department shall review each utility owner's preliminary work plan to ensure compatibility with utility accommodation permit requirements, the plans for the highway improvement project, and the construction schedule.

115.27(4) Conflict between preliminary work plans. When requested by the utility owners or when the department determines there is potential for conflict between preliminary work plans, the department shall schedule a coordination meeting. All affected utility owners shall attend the meeting to coordinate their work plans. The department may allow a utility owner an additional 30 calendar days to submit its preliminary work plan if coordination is required with other utility owners.

115.27(5) Acceptance of preliminary work plan. The department shall notify the utility owner of the department's acceptance of the utility owner's preliminary work plan.

a. If the preliminary work plan is not acceptable to the department, the department shall notify the utility owner that the plan is not acceptable and provide a detailed explanation of the problem.

b. The utility owner shall submit a revised preliminary work plan to the department within 30 calendar days after its

receipt of notice from the department that the plan was not acceptable.

c. The department shall review the revised preliminary work plan. If the work plan is acceptable, the department shall notify the utility owner of the department's acceptance of the plan.

d. If the work plan is still not acceptable, the process set out in 115.27(5)"a" to "c" shall be repeated.

115.27(6) Agreement.

a. The department shall enter into an agreement with the utility owner if the adjustment is eligible for reimbursement.

b. The agreement by itself does not constitute a permit nor does it grant permission to occupy the primary highway right-of-way. The utility owner is responsible for obtaining a utility accommodation permit prior to commencing work within the right-of-way. The agreement will then be attached to and become part of the permit.

761—115.28(306A) Second plan submission, final work plan and permit application.

115.28(1) Second plan. After the final public information meeting, the department shall submit its second plan to the owner of each known utility facility within the project limits. The second plan shall show any additional plan information or design changes the owner needs in order to complete its design and layout for the adjustment. The department shall clearly identify to the utility owner the differences between the first and second plans.

115.28(2) Final work plan. Within 60 calendar days after the date the department submits the second plan, the utility owner shall provide to the department a final work plan.

a. The final work plan shall include the anticipated starting date for the utility owner's work within the primary highway right-of-way.

b. A completed application for a utility accommodation permit must accompany the final work plan for work within the primary highway right-of-way. The work plan by itself does not constitute a permit nor does it grant permission to occupy the primary highway right-of-way.

c. When requested by the utility owner, the department may allow additional time to complete the final work plan if the second plan requires extensive modifications to the preliminary work plan.

d. If there are no changes to the preliminary work plan, the utility owner need only notify the department that the preliminary work plan is now the final work plan.

115.28(3) Department review of final work plan. The department shall review each utility owner's final work plan to ensure compatibility with utility accommodation permit requirements, the plans for the highway improvement project, and the construction schedule.

115.28(4) Acceptance of final work plan. The department shall notify the utility owner of the department's acceptance of the utility owner's final work plan.

a. If the final work plan is not acceptable to the department, the department shall notify the utility owner that the plan is not acceptable and provide a detailed explanation of the problem.

b. The utility owner shall submit a revised final work plan to the department within 30 calendar days after its receipt of notice from the department that the plan was not acceptable.

c. The department shall review the revised final work plan. If the work plan is acceptable, the department shall notify the utility owner of the department's acceptance of the plan.

d. If the work plan is still not acceptable, the process set out in 115.28(4)"a" to "c" shall be repeated.

761—115.29(306A) Notice of work.

115.29(1) Notice of receipt of permits and approvals. The utility owner shall notify the department within 14 calendar days after the utility owner has received all required permits and approvals from government agencies and railroad companies.

115.29(2) Notice to utility owner to begin work.

a. The department shall send a notice to proceed to the utility owner not less than 30 calendar days before the utility owner is required to begin the work provided for in its work plan.

b. If the utility owner's work plan is dependent upon work by the highway contractor, the contractor shall provide the department and the utility owner a good faith notice 14 calendar days before the contractor's work is expected to be complete and ready for the utility owner to begin its work. The highway contractor shall follow up with a confirmation notice to the department and the utility owner not less than three working days before the contractor's work will be complete and ready for the utility owner to begin its work.

115.29(3) Notice to department of commencement and completion of work. The utility owner shall give the department 48 hours prior notice, excluding weekends and holidays, of its intent to start utility adjustment work within the project limits. The utility owner shall also notify the department immediately upon completion of the work.

761—115.30(306A) Miscellaneous adjustment provisions.

115.30(1) Work plan compliance. The utility owner shall complete its utility adjustment work within the time frame of the work plan accepted by the department. Upon completion of the work, the utility owner shall certify to the department that the adjustment of its facilities is in accordance with the accepted work plan.

115.30(2) Project changes prior to the letting. If, prior to the letting date of the highway improvement project, changes to the project result in the need for additional utility adjustment work, the department shall furnish a revised project plan to each affected utility owner. The department shall clearly identify to the utility owner those portions of the project that have been revised. Within 60 calendar days after the date the department submits the revised project plan, the utility owner shall provide to the department a revised work plan.

115.30(3) Project changes after the letting. If, after the letting date of the highway improvement project, changes to the project result in the need for additional utility adjustment work, the department shall notify each affected utility owner. The department and the owner shall agree on a revised work plan.

115.30(4) Work plan changes. If a utility owner needs to change its work plan after its adjustment work begins, the utility owner shall notify the department. Once the department approves a modified work plan, the utility owner may make the necessary changes and perform the work.

115.30(5) Cost allocation.

a. If the department requires the adjustment of a utility facility that was originally determined, per the notice and work plan processes, to not need adjustment:

(1) The utility owner shall bear the cost of the adjustment if the work is otherwise not reimbursable.

(2) The department shall bear the reasonable cost of the adjustment if the work is otherwise reimbursable.

TRANSPORTATION DEPARTMENT[761](cont'd)

b. If the department requires additional adjustment to a utility facility after the facility has been adjusted in accordance with a work plan accepted by the department, the department shall bear the reasonable cost of the additional work. This applies to all utility facilities, whether the original adjustment work was reimbursable or not reimbursable.

c. The utility owner shall bear the cost of additional adjustment work performed after its facilities have been adjusted in accordance with a work plan accepted by the department if the additional work is due to the utility owner's error.

115.30(6) Failure to provide a work plan or to adjust utility facilities. If a utility owner fails to provide a work plan, fails to comply with the accepted work plan, or fails to complete the adjustment of its facilities, and its failure to perform results in a delay to the highway project or causes damages to be incurred by the department or the department's highway contractor, the utility owner is liable for all costs and damages incurred as a result of its failure to perform. The department may withhold approval of permits for failure to comply with the requirements of these rules.

These rules are intended to implement Iowa Code chapters 306A and 319, section 314.20, and sections 320.4 to 320.8.

ARC 2680B

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 474.5, 476.1, 476.2, and 476.4, the Utilities Board (Board) gives notice that on July 18, 2003, the Board issued an order in Docket No. RMU-03-11, In re: Intrastate Access Service Charges, "Order Commencing Rule Making."

The Board is proposing to amend 199 IAC 22.14(2)"d" to reflect the Board's current practices with respect to rate-regulated incumbent local exchange carriers (ILECs) and with respect to competitive local exchange carriers (CLECs) that compete with ILECs that have lower intrastate access charges. The proposed amendments would have no effect on the intrastate access charges of incumbent local exchange carriers that are not subject to the Board's rate regulation authority. The background and support for the proposed amendment can be found in the Order issued concurrently with this Notice and posted on the Board's Web site at www.state.ia.us/iub. This Order is also available in hard copy for review or purchase at the Board's Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515)281-5563.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before August 28, 2003, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation to receive comments on the proposed amendments is scheduled for 10 a.m. on September 23, 2003, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 17A.4, 474.5, 476.1, 476.2, and 476.4.

The following amendments are proposed.

Amend paragraph **22.14(2)"d"** to read as follows:

d. All intrastate access service tariffs shall ~~comply with~~ *incorporate* the following:

(1) Carrier common line charge. The rate for the intrastate carrier common line charge shall be three cents per access minute or fraction thereof for both originating and terminating segments of the communication. The carrier common line charge shall be assessed to exchange access made by any interexchange telephone utility, including resale carriers. In lieu of this charge, interconnected private systems shall pay for access as provided in 22.14(1)"b."

1. Rate-regulated local exchange utility intrastate access service tariffs shall include the carrier common line charges approved in the rate-regulated local exchange utility's price regulation plan or as otherwise approved by the board.

2. A competitive local exchange carrier that concurs with the Iowa Telephone Association (ITA) access service tariff no. 1 and that offers service in exchanges where the incumbent local exchange carrier's intrastate access rate is lower than the ITA access rate shall deduct the carrier common line charge from its intrastate access service tariff.

(2) to (7) No change.

ARC 2685B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts new chapter Chapter 62, "Cogeneration Pilot Program," Iowa Administrative Code.

The new chapter establishes application requirements, evaluation criteria and procedures for participation in the Cogeneration Pilot Program in accordance with 2003 Iowa Acts, House File 391.

These rules were also published under Notice of Intended Action in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2593B**. A public hearing on the proposed rules was held on July 29, 2003, at 1 p.m. at the Iowa Department of Economic Development located at 200 East Grand Avenue, Des Moines, Iowa.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because there are applicants with projects pending who have expressed the need to move quickly in order to begin their projects. Prior to project initiation, an applicant must have submitted an application and have received a decision from the Department as to whether or not the project will be designated as an approved Cogeneration Pilot Program project. The ability to take action on applications in a timely fashion to allow projects to move forward is in the public interest.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective upon filing on July 18, 2003. These rules confer a benefit on the public by allowing the Department to provide to applicants the necessary decisions that will enable applicants to determine if they may begin projects. Participation in this program is intended to foster the development of electricity cogeneration within the state, which has been identified as a public purpose.

The agency is taking the following steps to notify potentially affected parties of the effective date of the rules: publishing the rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

The IDED Board adopted the rules on July 17, 2003.

These rules are intended to implement 2003 Iowa Acts, House File 391.

These rules became effective on July 18, 2003.

The following **new** chapter is adopted.

CHAPTER 62
COGENERATION PILOT PROGRAM

261—62.1(80GA,HF391) Purpose. The purpose of the cogeneration pilot program (CPP) is to foster the development of electricity cogeneration within the state in order to diversify Iowa's electricity supply and foster economic development.

261—62.2(80GA,HF391) Eligible activities. The department may choose up to two projects for participation in the cogeneration pilot program.

261—62.3(80GA,HF391) Eligibility requirements. To be eligible for the cogeneration pilot program, a business shall meet each of the following requirements:

62.3(1) Generation capacity. Each cogeneration pilot project facility must involve a project of 200 megawatts or less of electric generation capacity.

62.3(2) Investment location. Each cogeneration pilot project facility must be located within Iowa.

62.3(3) Economic impacts. The business shall demonstrate, as a result of the proposed project, significant beneficial economic impacts to the state or to a region of the state.

62.3(4) No closure or reduction in operations. The business shall not close or substantially reduce operations at one location in Iowa and relocate substantially the same operation elsewhere in the state if the closure or reduction results in loss of employment.

261—62.4(80GA,HF391) Application procedures.

62.4(1) Application required. To receive designation as an approved cogeneration pilot program project, an application must be submitted in the format specified by the department. A business shall submit an application on its own behalf.

62.4(2) Application contents. Applications shall include the following:

a. A project description including the activities involved and the impact the project is expected to have on electricity cost, availability and reliability.

b. A description of the consistency of the proposed project with state and regional plans for economic development.

c. An identification of the number of jobs to be created or retained as a result of the project and an explanation of why the jobs are considered quality, high-wage jobs. The explanation shall include the job classifications, pay ranges, and benefits to be provided to the employees.

d. An identification of the amount, terms, and sources of all proposed public and private investments in the project and a statement that indicates whether the other financing has been secured or is still to be arranged.

e. Cost estimates for all project activities.

f. A time frame within which the project will be completed.

g. A description of the immediate (within 24 months) economic development impacts as a result of the project.

h. A description of the long-term (beyond 24 months), speculative economic development impacts as a result of the project.

i. An explanation as to why the project could not otherwise occur without the benefits of this program.

62.4(3) Application due date. In order to be considered for review, an application must be submitted to the department before April 1, 2007.

261—62.5(80GA,HF391) Application review. Completed applications will be reviewed using the following factors:

62.5(1) The expected immediate and long-term economic impacts the project will have on the state of Iowa and region(s) of Iowa including, but not limited to, the likelihood that the project will result in additional new private investment and quality job creation in Iowa. In determining the quality of possible new jobs to be created, the department will consider projected wage levels, fringe benefit packages, turnover rate, full-time and career positions, and other relevant factors.

62.5(2) Substantiality of the capital investment pledged by the business.

62.5(3) The likelihood of closure or relocation of the business's operations and any resulting loss of employment.

62.5(4) The number of direct jobs to be created by the project.

62.5(5) The amount, terms, and sources of all proposed public and private investments that the project will leverage.

62.5(6) The degree of coordination the project has with state and regional economic development plans.

62.5(7) The feasibility of the project.

62.5(8) Any other information about the business that has a bearing on the likely success of the project.

261—62.6(80GA,HF391) Award process.

62.6(1) Applications will be reviewed and summarized by department staff. Staff will prepare a summary for the director of the department, who shall make a final decision on the application.

62.6(2) Upon an application's submission, department staff will consult with the Iowa utilities board and any other relevant state agency or interested party in order to gain additional information or to seek comment.

62.6(3) The department shall not approve any application after June 30, 2007.

261—62.7(80GA,HF391) Annual progress report. Every approved pilot project designee shall submit an annual progress report, whose format will be determined by the department. The annual report shall be submitted no later than November 1, beginning in the year 2004 and every year thereafter, up to and including 2007.

These rules are intended to implement 2003 Iowa Acts, House File 391.

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ARC 2654B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 217.6 and 2003 Iowa Acts, House File 667, section 50, subsection 3, the Department of Human Services amends Chapter 53, "Rent Subsidy Program," Iowa Administrative Code.

These amendments change the eligibility requirements for the rent subsidy program, as mandated by 2003 Iowa Acts, House File 667, section 50, subsection 3. Medicaid home- and community-based waiver recipients who are paying more than 30 percent of their income for rent and are not eligible for other rental assistance programs may be eligible for assistance under the rent subsidy program.

These amendments rescind rules requiring that consumers be discharged from a medical institution immediately before receiving waiver services or have reached age 18 during the last year of their institutional stay as conditions of eligibility. Under these amendments, only risk of placement in a nursing facility qualifies a needy waiver recipient for rent subsidy.

These amendments do not provide for waivers in specified situations because the legislation did not provide for exceptions. Individuals may request a waiver of these requirements under the Department's general rule on exceptions at rule 441—1.8(17A,217).

The Department of Human Services finds that notice and public participation are impracticable and unnecessary, because the legislation requiring these changes took effect on July 1, 2003, and directs the Department to adopt emergency rules. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective July 10, 2003, as authorized by 2003 Iowa Acts, House File 667, section 50, subsection 3.

These amendments are also published herein under Notice of Intended Action as **ARC 2658B** to allow for public comment.

The Council on Human Services adopted these amendments on July 9, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 667, section 50, subsection 3.

These amendments became effective on July 10, 2003.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 53**, Preamble, as follows:

Amend the introductory paragraph as follows:

This chapter defines and structures the rent subsidy program for persons who participate in a home- and community-based service (HCBS) waiver program and who ~~:~~ *are at risk of nursing facility placement.*

Rescind numbered paragraphs **"1"** through **"4."**

ITEM 2. Amend rule **441—53.1(79GA,HF732)** as follows:

Amend the definition of "medical institution" as follows:

"Medical institution" means an ICF/MR, nursing facility, skilled nursing facility, or hospital ~~that is an approved Medicaid provider~~.

Adopt the following **new** definition in alphabetical order:

"Nursing facility" means a nursing facility as defined in Iowa Code section 135C.1, subsection 13.

ITEM 3. Amend rule 441—53.2(79GA,HF732) as follows:

Rescind and reserve subrules **53.2(2)** and **53.2(5)**.

Amend subrule 53.2(4) as follows:

53.2(4) Risk of ~~institutional~~ *nursing facility* placement. ~~Adults~~ *Applicants* who can avoid placement in a ~~medical institution~~ *nursing facility* by accessing this rent subsidy program and by use of services provided under an HCBS waiver shall be eligible for rental assistance. Applicants must ~~meet all eligibility criteria of this program, except the requirements of subrule 53.2(2), and~~ be able to demonstrate both of the following:

a. That they have insufficient funds to pay their community housing costs and that insufficient funds will cause them to enter a ~~medical institution~~ *nursing facility.*

b. That participating in an HCBS waiver will prevent them from entering a ~~medical institution~~ *nursing facility* and that access to this ~~rental~~ *rent* subsidy program is required so that they may live in a community living arrangement permitted under a waiver.

ITEM 4. Amend subrule 53.3(2) as follows:

53.3(2) Date of application. The date of the application shall be the date the application, including written verification of income, written verification of application to other rental assistance programs, and written verification of risk of

~~institutional~~ *nursing facility* placement~~, if applicable,~~ is received by the bureau of long-term care.

ITEM 5. Amend **441—Chapter 53**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 217.6~~,~~ *;* 2001 Iowa Acts, chapter 191, section 11, subsection 3~~, and~~ *;* 2002 Iowa Acts, *Second Extraordinary Session*, chapter 1003, section 118, subsection 3*; and 2003 Iowa Acts, House File 667, section 50, subsection 3*.

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ARC 2656B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 234.6 and 235B.5(1), the Department of Human Services amends Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These amendments make changes to rules on the Department's response to a report of suspected dependent adult abuse and on maintenance and confidentiality of abuse information. The amendments are necessary to conform the rules to statutory changes made by the Eightieth General Assembly in 2003 Iowa Acts, Senate File 416 and House File 558.

The amendments:

- Permit the Department to approve an agency and designate that agency to complete an assessment of necessary services for a dependent adult who is suspected of being abused and authorize an approved agency's access to founded abuse information. These changes will allow the Department to approve the Elder Abuse Initiative to provide assessments and to communicate more freely during a dependent adult abuse evaluation. The Elder Abuse Initiative is funded by the Senior Living Trust Fund through the Department of Elder Affairs and the area agencies on aging.
- Remove the category referred to as "undetermined reports." Previously, Department protective service staff could find a dependent adult abuse report "undetermined" when they could not determine that there was a preponderance of evidence that the abuse was "founded" or "unfounded." As of July 1, all reports must be determined to be either "founded" based on a preponderance of evidence or "unfounded."
- Require the Department to maintain "unfounded" reports for one year instead of expunging them immediately.
- Allow the Department to inform a subject of a dependent adult abuse report that a person is listed on the child or dependent adult abuse registry or the sex offender registry as having sexually abused someone, if it is determined disclosure is necessary for the protection of the dependent adult.
- Expand access to dependent adult abuse information for entities involved in investigation of dependent adult abuse or care of a dependent adult, including multidisciplinary teams and the long-term care resident advocate in the Department of Elder Affairs.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

The Department finds that notice and public participation are impracticable and contrary to the public interest because the current rules do not conform to statutory changes that became effective on July 1, 2003. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public by expanding the available resources for investigation of reports of abuse and by eliminating confusion caused by contradictory provisions in rules and law. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments shall be waived.

These amendments are also published herein under Notice of Intended Action as **ARC 2660B** to allow for public comment.

The Council on Human Services adopted these amendments July 9, 2003.

These amendments are intended to implement Iowa Code chapter 235B as amended by 2003 Iowa Acts, Senate File 416 and House File 558.

These amendments became effective July 10, 2003.

The following amendments are adopted.

ITEM 1. Amend rule 441—176.6(235B) by adopting the following **new** subrule:

176.6(12) Assessments by other agencies. The department may approve agencies considered capable and appropriate to complete assessments of dependent adults who are suspected of being abused.

a. The department may make a referral to an approved agency to complete an assessment of a dependent adult who is suspected of being abused, in conjunction with a department abuse evaluation or assessment on the dependent adult.

b. The department may use information obtained from the assessment completed by the approved agency in the abuse evaluation or assessment. The department has complete authority in determining the conclusions of the abuse evaluation or assessment.

ITEM 2. Amend rule 441—176.10(235B) as follows:

Amend subrule **176.10(3)** as follows:

Amend paragraph **"b"** by adopting the following **new** subparagraphs:

(6) An agency approved by the department to conduct an assessment.

(7) Each board of examiners specified under Iowa Code chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

Amend paragraph **"c"** by adopting the following **new** subparagraph:

(8) The long-term care resident advocate, if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility.

Rescind and reserve subrule **176.10(5)**.

Amend subrule 176.10(6) as follows:

176.10(6) Access to unfounded dependent adult abuse information. Access to unfounded dependent adult abuse information is authorized only to*:*

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. ~~persons~~ *Persons* identified as subjects of a report, including the *dependent* adult named in a report as a victim, a guardian of a dependent adult named in a report as a victim, a person named in a report as having abused a dependent adult, or an attorney representing any of the above;

b. ~~an~~ *An* employee or agency of the department of human services responsible for the evaluation or assessment of a dependent adult abuse report; ~~and~~

c. ~~registry~~ *Registry* or department personnel, when necessary to the performance of their official duties, or a person or agency under contract with the department to carry out official duties and functions of the registry*;*

d. The mandatory reporter who reported dependent adult abuse in an individual case;

e. The long-term care resident advocate, if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility; and

f. A multidisciplinary team, if the department approves the composition of the team and determines that access to the team is necessary to assist in the evaluation, diagnosis, assessment, and disposition of a dependent adult abuse case.

Adopt the following **new** subrule:

176.10(11) Subjects informed of sexual abuse history. The department may inform a subject of a dependent adult abuse report of a person's sexual abuse history if the department determines at any time that disclosure is necessary for the protection of the dependent adult. A subject may be informed that a person is listed on the child or dependent adult abuse registry as having a founded sexual abuse report or is listed on the sex offender registry.

ITEM 3. Amend rule 441—176.13(235B) as follows:

Amend subrule 176.13(2) as follows:

176.13(2) Unfounded reports. A report of dependent adult abuse determined to be unfounded shall be expunged ~~when~~ *one year from the date* it is determined to be unfounded, in accordance with Iowa Code section 235B.9, subsection 2.

Rescind and reserve subrule **176.13(3)**.

ITEM 4. Amend **441—Chapter 176**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 235B *as amended by 2003 Iowa Acts, Senate File 416 and House File 558*.

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ARC 2655B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 202, "Foster Care Services," Iowa Administrative Code.

This amendment conforms the rule on voluntary foster care placements to statutory changes made by 2003 Iowa Acts, House File 667, section 37. That legislation extends from 30 days to 90 days the potential duration of a foster care placement made on a voluntary basis for a child under the age of 18. (Longer placements must be authorized by juvenile court action.) The amendment also makes technical changes to update the form number of the Voluntary Placement Agreement and the title of the Department employee responsible for approving the Voluntary Placement Agreement, for clarity.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

The Department finds that notice and public participation are impracticable and contrary to the public interest because the current rule is in contradiction with statutory changes that took effect on July 1, 2003. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit by making rules conform to the authorizing statute and benefits families seeking voluntary foster care placement by extending the time available to resolve the issues resulting in foster care placement without formal court action. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2). The Department finds that the normal effective date of this amendment should be waived and this amendment made effective July 10, 2003.

This amendment is also published herein under Notice of Intended Action as **ARC 2659B** to allow for public comment.

The Council on Human Services adopted this amendment July 9, 2003.

This amendment is intended to implement Iowa Code section 234.35(1)"c" as amended by 2003 Iowa Acts, House File 667, section 37.

This amendment became effective July 10, 2003.

The following amendment is adopted.

Amend rule 441—202.3(234) as follows:

Amend subrules 202.3(1) and 202.3(2) as follows:

202.3(1) All voluntary placement agreements initiated after ~~June 30, 1992~~ *July 1, 2003,* for children under the age of 18 shall terminate after ~~30~~ *90* days. ~~For all voluntary placements initiated before July 1, 1992, the department shall file a petition with the court for approval on or before September 1, 1992.~~

202.3(2) When the voluntary placement is of a child who is under the age of 18, a Voluntary Foster Care Placement Agreement, Form ~~SS-2604~~ *470-0715*, shall be completed and signed by the parent(s) or guardian and the county office where the parent or guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with parents or guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's parent or guardian moves outside Iowa after the placement.

Amend subrule **202.3(3)**, paragraphs **"a"** and **"b,"** as follows:

a. When the voluntary placement is of a child who is aged 18 or older and who has a court-ordered guardian, the Voluntary Foster Care Placement Agreement, Form ~~SS-2604~~ *470-0715*, shall be completed and signed by the guardian and the county office where the guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's guardian moves outside Iowa after the placement.

b. When the voluntary placement is of a child who is aged 18 or older and who does not have a court-appointed guardian, the Voluntary Foster Care Placement Agreement,

HUMAN SERVICES DEPARTMENT[441](cont'd)

Form ~~SS-2604~~ *470-0715*, shall be completed and signed by the child and the county office where the child resides.

Amend subrule 202.3(4) as follows:

202.3(4) All voluntary placements shall be approved by the ~~regional administrator~~ *service area manager* or designee.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 234.6(6)"b" and *section 234.35(1)"c" as amended by* ~~1992~~ *2003* Iowa Acts, House File ~~2480~~ *667*, ~~sections 11 and 12~~ *section 37*.

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ARC 2687B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby amends Chapter 325, "Administrative and Regulatory Authority for the Board of Physician Assistant Examiners"; rescinds Chapter 326, "Licensure of Physician Assistants," and adopts new Chapter 326 with the same title; amends Chapter 328, "Continuing Education for Physician Assistants"; and rescinds Chapter 330, "Fees," Iowa Administrative Code, and adopts new Chapter 330 with the same title.

These amendments implement Iowa Code chapter 148C as amended by 2003 Iowa Acts, House File 628. The amendments rescind all references to registration and to the rules review group; enable applicants to apply for licensure before obtaining a supervising physician; and allow physician assistants to place their licenses on inactive status if they are not currently practicing in Iowa.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are impracticable because of the immediate need for rule changes to implement the provisions of Iowa Code chapter 148C as amended by 2003 Iowa Acts, House File 628.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on July 18, 2003, because the amendments facilitate the renewal process for licensees who are currently scheduled to renew their licenses.

The Board of Physician Assistant Examiners adopted these amendments on July 16, 2003.

These amendments are intended to implement Iowa Code chapter 148C as amended by 2003 Iowa Acts, House File 628, and Iowa Code chapters 17A and 272C.

These amendments became effective July 18, 2003.

The following amendments are adopted.

ITEM 1. Amend rule **645—325.1(17A)** by rescinding the definition of "review group."

ITEM 2. Rescind rule **645—325.7(17A,147,148C)**.

ITEM 3. Rescind 645—Chapter 326 and adopt the following **new** chapter in lieu thereof:

CHAPTER 326
LICENSURE OF PHYSICIAN ASSISTANTS

645—326.1(148C) Definitions.

"Approved program" means a program for the education of physician assistants which has been accredited by the American Medical Association's Committee on Allied Health Education and Accreditation, by its successor, the Commission on Accreditation of Allied Health Education Programs, or by its successor, the Accreditation Review Commission on Education for the Physician Assistant, or its successor.

"Board" means the board of physician assistant examiners.

"CME" means continuing medical education.

"Department" means the department of public health.

"Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

"Licensee" means a person licensed by the board as a physician assistant to provide medical services under the supervision of one or more physicians.

"Locum tenens" means the temporary substitution of one licensed physician assistant for another.

"Mandatory training" means training on identifying and reporting child abuse or dependent adult abuse required of physician assistants who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

"NCCPA" means the National Commission on Certification of Physician Assistants.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician supervising a physician assistant practicing in a federal facility or under federal authority shall not be required to obtain licensure beyond licensure requirements mandated by the federal government for supervising physicians.

"Physician assistant" means a person licensed as a physician assistant by the board.

"Remote medical site" means a medical clinic for ambulatory patients which is away from the main practice location of a supervising physician and in which a supervising physician is present less than 50 percent of the time the site is open. "Remote medical site" will not apply to nursing homes, patient homes, hospital outpatient departments or any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility).

"Supervising physician" means a physician who supervises the medical services provided by the physician assistant and who accepts ultimate responsibility for the medical care provided by the physician/physician assistant team.

"Supervision" means that a supervising physician retains ultimate responsibility for patient care, although a physician need not be physically present at each activity of the physician assistant or be specifically consulted before each delegated task is performed. Supervision shall not be construed as requiring the personal presence of a supervising physician at the place where such services are rendered except insofar as the personal presence is expressly required by these rules or by Iowa Code chapter 148C.

"Supply prescription drugs" means to deliver to a patient or the patient's representative a quantity of prescription drugs or devices that are properly packaged and labeled.

645—326.2(148C) Requirements for licensure.

326.2(1) The following criteria shall apply to licensure:

a. An applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site (http://www.idph.state.ia.us/licensure) or directly from the board office. All applications shall be sent to the Board of Physician Assistant Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. An applicant shall complete the application form according to the instructions contained in the application.

c. Each application shall be accompanied by the appropriate fees payable by check or money order to the Iowa Board of Physician Assistant Examiners. The fees are nonrefundable.

d. Each applicant shall provide official copies of academic transcripts that have been sent to the board directly from an approved program for the education of physician assistants. EXCEPTION: An applicant who is not a graduate of an approved program but who passed the NCCPA initial certification examination prior to 1986 is exempt from the graduation requirement.

e. An applicant shall provide a copy of the initial certification from NCCPA, or its successor agency, sent directly to the board from the NCCPA, or its successor agency.

f. Prior to beginning practice, the physician assistant shall notify the board of the identity of the supervising physician(s) on the board-approved form.

326.2(2) Licensees who were issued their licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

326.2(3) Incomplete applications that have been on file in the board office for more than two years shall be:

a. Considered invalid and shall be destroyed; or

b. Maintained upon written request of the candidate.

645—326.3(148C) Temporary licensure.

326.3(1) A temporary license may be issued for an applicant who has not taken the NCCPA initial certification examination or successor agency examination or is waiting for the results of the examination.

326.3(2) The applicant must comply with subrule 326.2(1), with the exception of paragraph "e."

326.3(3) A temporary license shall be valid for one year from the date of issuance.

326.3(4) The temporary license shall be renewed only once upon the applicant's showing proof that, through no fault of the applicant, the applicant was unable to take the certification examination recognized by the board. Proof of inability to take the certification examination shall be submitted to the board office with written request for renewal of a temporary license, accompanied by the temporary license renewal fee.

326.3(5) If the temporary licensee fails the certification examination, the temporary licensee must cease practice immediately and surrender the temporary license by the next business day.

326.3(6) There is no additional fee for converting temporary licensure to permanent licensure.

645—326.4(148C) Licensure by endorsement. An applicant who has been licensed under the laws of another jurisdiction shall file an application for licensure by endorsement. An applicant shall:

326.4(1) Submit to the board a completed application according to the instructions on the application.

326.4(2) Pay the nonrefundable licensure fee.

326.4(3) Provide an official copy of the transcript sent directly to the board from an approved program for the education of physician assistants or qualify for the exception stated in paragraph 326.2(1)"d."

326.4(4) Provide a copy of the initial certification from NCCPA, or its successor agency, sent directly to the board from the NCCPA, or its successor agency. Additionally, provide one of the following documents:

a. Copy of current certification from the NCCPA, or its successor agency, sent directly to the board from the NCCPA, or its successor agency; or

b. Proof of completion of 100 CME hours for each biennium since initial certification.

326.4(5) Provide verification of license(s) from every state of the United States and from the District of Columbia in which the applicant has practiced, which shall be sent directly from the state(s) to the board office.

326.4(6) Prior to beginning practice, the physician assistant shall notify the board of the identity of the supervising physician(s) on the board-approved form.

645—326.5(148C) Licensure by reciprocal agreement. The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure of physician assistants.

645—326.6(148C) Examination requirements. The applicant for licensure as a physician assistant shall successfully pass the certifying examination for physician assistants conducted by the National Commission on Certification of Physician Assistants or a successor examination approved by the board.

645—326.7(148C) Educational qualifications. An applicant for licensure as a physician assistant shall submit official copies of academic transcripts from an approved program for education of physician assistants, or the applicant shall qualify for the exception stated in paragraph 326.2(1)"d."

645—326.8(148C) Supervision requirements.

326.8(1) Notification requirements. Physician assistants shall use the board-approved forms to notify the board of the identity of their supervising physicians at the following times:

a. Prior to beginning practice in Iowa.

b. Within 90 days of any change in supervisory relationship or change in supervisory physicians.

c. At the time of license renewal. The physician assistant shall provide the identity of the current supervising physician(s) and of the supervising physician(s) who has provided supervision during the physician assistant's current biennium.

326.8(2) The physician assistant shall maintain documentation of current supervising physicians, which shall be made available to the board upon request.

326.8(3) A physician assistant who provides medical services shall be supervised by one or more physicians; but a physician shall not supervise more than two physician assistants at the same time.

326.8(4) It shall be the responsibility of the physician assistant with a supervising physician to ensure that the physician assistant is adequately supervised.

a. Patient care provided by the physician assistant shall be reviewed with a supervising physician on an ongoing ba-

sis as indicated by the clinical condition of the patient. Although every chart need not be signed nor every visit reviewed, nor does the supervising physician need to be physically present at each activity of the physician assistant, it is the responsibility of the supervising physician and physician assistant to ensure that each patient has received the appropriate medical care.

b. Patient care provided by the physician assistant may be reviewed with a supervising physician in person, by telephone or by other telecommunicative means.

c. When signatures are required, electronic signatures are allowed if:

(1) The signature is transcribed by the signer into an electronic record and is not the result of electronic regeneration; and

(2) A mechanism exists allowing confirmation of the signature and protection from unauthorized reproduction.

d. If the physician assistant is being trained to perform new medical procedures, the training may be carried out only under the direct, personal supervision of a supervising physician or another qualified individual.

645—326.9(148C) License renewal.

326.9(1) The biennial license renewal period for a license to practice as a physician assistant shall begin on October 1 and end on September 30. The licensee shall meet the continuing education requirements of 645—Chapter 328 at the time of license renewal.

326.9(2) A renewal of license application and continuing education report form to practice as a physician assistant shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the licensee of the obligation to pay biennial renewal fees on or before the renewal date.

a. The licensee shall submit the completed application, continuing education report form or copy of current certification, and renewal fee to the board office before the license expiration date. If the licensee is currently practicing as a physician assistant, a list of supervising physicians shall be submitted with the renewal documents.

b. A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "f."

c. A licensee who regularly examines, attends, counsels or treats dependent adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "f."

d. A licensee who regularly examines, attends, counsels or treats both dependent adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "f."

Training may be completed through separate courses as identified in paragraphs "b" and "c" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.

e. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "b" to "d," including program date(s), content, duration, and proof of participation.

f. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 328.

g. The board may select licensees for audit of compliance with the requirements in paragraphs "b" to "f."

h. Persons licensed to practice as physician assistants shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

326.9(3) Late renewal. If the renewal fee, continuing education report and renewal application are received within 30 days after the license expiration date, the late fee for failure to renew before expiration shall be charged.

326.9(4) When all requirements for license renewal are met, the licensee shall be sent a license renewal card by regular mail.

645—326.10(272C) Exemptions for inactive practitioners.

326.10(1) A licensee who is not engaged in practice in the state of Iowa may be granted an exemption of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in the state of Iowa without first complying with all regulations governing reinstatement. The application for a certificate of exemption shall be submitted upon the form provided by the board. A licensee must hold a current license in good standing in order to apply for inactive status and must apply prior to the license expiration date.

326.10(2) Reinstatement of inactive practitioners. An inactive practitioner who has requested and been granted an exemption of compliance with the renewal requirements and who has obtained a certificate of exemption shall, prior to engaging in the practice of the profession in Iowa, satisfy the requirements for reinstatement as outlined in 645—328.9(148C).

326.10(3) A licensee shall renew at the scheduled renewal. A licensee whose license was reinstated within six months prior to the renewal date shall not be required to renew the license until the renewal date two years later.

326.10(4) A new licensee whose license is on inactive status during the initial license renewal time period and who reinstates the license before the first license expiration date will not be required to complete continuing education for that first license renewal time period only. One hundred hours of continuing education will be required for every renewal thereafter.

326.10(5) Verification of license(s) is required from every state in which the licensee has practiced since the Iowa license became inactive.

326.10(6) Reinstatement of inactive license. The following chart illustrates the requirements for reinstatement based on the length of time a license has been inactive.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

An applicant shall satisfy the following requirements:	30 days after expiration date up to 1 renewal	2 or more renewals
Submit written application for reinstatement to the board	Required	Required
Pay the current renewal fee	$100	$100
Pay the reinstatement fee	$50	$50
Submit verification(s) from every state in which the licensee has practiced since the Iowa license became inactive	Required	Required
Complete continuing education requirements OR Submit a copy of NCCPA or successor agency certification	100 CME hours, of which at least 40 percent shall be in Category I OR Copy of NCCPA or successor agency certification	200 CME hours, of which at least 40 percent shall be in Category I OR Copy of NCCPA or successor agency certification
Total fees and continuing education hours required for reinstatement:	$150 and 100 CME hours or NCCPA or successor agency certification	$150 and 200 CME hours or NCCPA or successor agency certification

645—326.11(272C) Lapsed license.

326.11(1) If the renewal fee and continuing education report are received more than 30 days after the license renewal expiration date, the license is lapsed. An application for reinstatement accompanied by the reinstatement fee, the renewal fee(s) for each biennium the license is lapsed and the late fee for failure to renew before expiration must be filed with the board. The licensee may be subject to an audit of the licensee's continuing education report.

326.11(2) Licensees who have not fulfilled the requirements for license renewal or for an exemption in the required time frame will have a lapsed license and shall not engage in practice as a physician assistant. Practicing without a license may be cause for disciplinary action.

326.11(3) In order to reinstate a lapsed license, licensees shall comply with all requirements for reinstatement as outlined in 645—328.5(148C).

326.11(4) After the reinstatement of a lapsed license, the licensee shall renew at the next scheduled renewal and complete the continuing education required for that biennium.

326.11(5) Verifications of license(s) are required from every state in which the licensee has practiced since the Iowa license lapsed.

326.11(6) Reinstatement of a lapsed license. The following chart illustrates the requirements for reinstatement based on the length of time a license has lapsed.

An applicant shall satisfy the following requirements:	30 days after expiration date up to 1 renewal	2 or more renewals
Submit written application for reinstatement to the board	Required	Required
Pay the current renewal fee(s)	$100	$200
Pay the late fee	$50	$50
Pay the reinstatement fee	$50	$50
Submit verification(s) from every state in which the licensee has practiced since the Iowa license lapsed	Required	Required
Complete continuing education requirements OR Submit a copy of NCCPA or successor agency certification	100 CME hours, of which at least 40 percent shall be in Category I OR Copy of NCCPA or successor agency certification	200 CME hours, of which at least 40 percent shall be in Category I OR Copy of NCCPA or successor agency certification
Total fees and continuing education hours required for reinstatement:	$200 and 100 CME hours or NCCPA or successor agency certification	$300 and 200 CME hours or NCCPA or successor agency certification

645—326.12(272C) License denial.

326.12(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined in these rules shall specifically describe the facts to be contested and determined at the hearing.

326.12(2) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C.

645—326.13(148C) Use of title. A physician assistant licensed under Iowa Code chapter 148C may use the words "physician assistant" after the person's name or signify the same by the use of the letters "PA."

645—326.14(148C) Address change. The physician assistant shall notify the board of any change in permanent address within 30 days of its occurrence.

645—326.15(148C) Student physician assistant.

326.15(1) Any person who is enrolled as a student in an approved program shall comply with the rules set forth in this chapter. A student is exempted from licensure requirements.

326.15(2) Notwithstanding any other provisions of these rules, a student may perform medical services when they are rendered within the scope of an approved program.

645—326.16(148C) Recognition of an approved program. The board shall recognize a program for education and training of physician assistants if it is accredited by the American Medical Association's Committee on Allied Health Education and Accreditation, by its successor, the Commission on Accreditation of Allied Health Educational Programs, or by its successor, the Accreditation Review Commission on Education for the Physician Assistant, or its successor.

This rule is intended to implement Iowa Code section 148C.2.

These rules are intended to implement Iowa Code chapters 17A and 272C and chapters 147 and 148C as amended by 2003 Iowa Acts, House File 628.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 4. Rescind the definition for "active license" in rule **645—328.1(148C)**.

ITEM 5. Renumber rule **645—328.8(272C)** as **645—328.10(272C)** and adopt the following **new** rules:

645—328.8(148C) Continuing education exemption for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted an exemption of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement. The application for a certificate of exemption shall be submitted upon forms provided by the board.

645—328.9(148C) Reinstatement of inactive practitioners. Inactive practitioners who have obtained a certificate of exemption shall, prior to engaging in practice as a physician assistant in the state of Iowa, satisfy the following requirements for reinstatement:

1. Submit a written application for reinstatement;
2. Pay the reinstatement fee;
3. Provide verification of license(s) from every state in which the licensee has practiced since obtaining inactive status;
4. Provide evidence of satisfactory completion of continuing education requirements during the period the license was inactive. The total number of continuing education hours required for license reinstatement is computed by multiplying 100 by the number of bienniums since the license was placed on inactive status to a maximum of two bienniums or 200 hours of continuing education credit, of which at least 40 percent of the hours completed shall be in Category I.

ITEM 6. Rescind 645—Chapter 330 and adopt the following **new** chapter in lieu thereof:

CHAPTER 330
FEES

645—330.1(148C) Fees. All fees are nonrefundable.

330.1(1) Application fee for a license is $100.
330.1(2) Fee for a temporary license is $100.
330.1(3) Renewal of license fee is $100.
330.1(4) Late fee for failure to renew before expiration is $50.
330.1(5) Reinstatement fee is $50.
330.1(6) Duplicate license fee is $10.
330.1(7) Fee for verification of license is $10.
330.1(8) Returned check fee is $15.
330.1(9) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148C and 272C.

[Filed Emergency 7/18/03, effective 7/18/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2652B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 139A.8(8), the Department of Public Health hereby amends Chapter 7, "Immunization of Persons Attending Elementary or Secondary Schools or Licensed Child Care Centers," Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers. The Iowa General Assembly passed 2003 Iowa Acts, House File 641, which adds the varicella vaccine to the list of immunizations required for enrollees in licensed child care centers and public or nonpublic elementary or secondary schools. These amendments provide information about the dose and timing of this vaccine. Child care centers and schools are expected to comply with this requirement as soon as possible. Complete compliance is expected by January 1, 2004.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are contrary to the public interest because the Act took effect July 1, 2003, and the information in these amendments is necessary to facilitate school enrollment for the fall.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on July 9, 2003, as these amendments confer a benefit on the public by allowing the public sufficient time for compliance.

These amendments are also published herein under Notice of Intended Action as **ARC 2653B** to allow public comment. This emergency filing permits the Department to implement the new provisions of the law.

The State Board of Health adopted these amendments on July 9, 2003.

These amendments became effective on July 9, 2003.

These amendments are intended to implement Iowa Code section 139A.8 as amended by 2003 Iowa Acts, House File 641.

The following amendments are adopted.

ITEM 1. Amend subrule 7.4(5) as follows:

7.4(5) 18 months of age and older: Applicants enrolled or attempting to enroll in a licensed child care center shall have received:

a. to c. No change.

d. At least one dose of rubeola (measles) and rubella containing vaccine received after the applicant was at least 12 months of age~~.~~ *; and*

e. At least one dose of varicella vaccine received after the applicant was at least 12 months of age, unless the applicant has had a reliable history of natural disease.

ITEM 2. Amend subrule **7.4(6)** by adding **new** paragraph **"e"** as follows:

e. At least one dose of varicella vaccine if the applicant was born on or after September 15, 1997, unless the applicant

has had a reliable history of natural disease, prior to the applicant's enrollment in school. This dose shall have been received after the applicant was at least 12 months of age.

[Filed Emergency 7/9/03, effective 7/9/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2686B

REVENUE DEPARTMENT[701]

Adopted and Filed Emergency

Pursuant to the authority of 2003 Iowa Acts, Senate File 375, section 7, the Department of Revenue hereby amends Chapter 85, "Tobacco Master Settlement Agreement," Iowa Administrative Code.

These rules require the Department to develop and publish on the Department's Web site a directory listing all tobacco product manufacturers that have provided current and accurate certification conforming to the requirements of 2003 Iowa Acts, Senate File 375, section 3(1), and all brand families that are listed in the certification, with the exceptions provided in 2003 Iowa Acts, Senate File 375, section 3(2).

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impractical because 2003 Iowa Acts, Senate File 375, requires that the Web site directory be published by August 6, 2003.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date for these rules is waived because they confer a public benefit in that they aid the enforcement of Iowa Code chapter 453C and thereby safeguard the tobacco master settlement agreement, the fiscal soundness of the state, and the public health.

These rules are intended to implement 2003 Iowa Acts, Senate File 375.

These rules became effective July 30, 2003.

The following rules are adopted.

ITEM 1. Amend **701—Chapter 85** by inserting the following **new** Division I heading before rule 701—85.1(453C):

DIVISION I
TOBACCO MASTER SETTLEMENT AGREEMENT

ITEM 2. Amend **701—Chapter 85** by adopting **new** Division II as follows:

DIVISION II
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

701—85.21(80GA,SF375) Definitions. For purposes of this division, the definitions set forth in 2003 Iowa Acts, Senate File 375, section 2, shall apply.

701—85.22(80GA,SF375) Directory of tobacco product manufacturers.

85.22(1) Directory of cigarettes approved for stamping and sale in Iowa. A tobacco product manufacturer and a brand family shall not be included in the directory authorized by 2003 Iowa Acts, Senate File 375, section 3, after April 30 each year until and unless the tobacco product manufacturer has provided current and accurate certification conforming to the requirements of 2003 Iowa Acts, Senate File 375, section 3. Nonparticipating manufacturers and their brand families shall not be included in the directory after April 30 each year until and unless the attorney general has determined that the nonparticipating tobacco product manufacturer is in full compliance with 2003 Iowa Acts, Senate File 375, section 3, and that neither subsection (2)"b"(1) nor (2)"b"(2) of section 3 applies to the nonparticipating tobacco product manufacturer or a brand family it seeks to have included in the directory. A tobacco product manufacturer or brand family shall be deleted from the directory if a determination is made by the attorney general that the tobacco product manufacturer no longer meets the requirements of 2003 Iowa Acts, Senate File 375, section 3, or that either subsection (2)"b"(1) or (2)"b"(2) of section 3 applies.

85.22(2) Notice of inclusion in directory. The attorney general shall notify a tobacco product manufacturer by mail that it has met the requirements of 2003 Iowa Acts, Senate File 375, section 3, and will be included in the directory. This notice shall include each brand family that the attorney general determines will be included in the directory.

85.22(3) Notice of noninclusion in or deletion from the directory. Tobacco product manufacturers that have applied for inclusion in the directory shall be notified in writing of a decision made by the attorney general not to include in or to delete from the directory the tobacco product manufacturer or a brand family. Such notice shall be served on the tobacco product manufacturer's agent for service of process by certified mail.

85.22(4) Procedure for contesting notice of noninclusion or deletion. A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing a written protest of that decision with the Iowa Department of Revenue, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule 701—7.41(17A). The protest shall conform generally to the requirements of 701—subrules 7.41(1) and 7.41(2) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with the rules set forth in 701—Chapter 7, Division II, rules 7.43(17A), 7.45(17A), and 7.47(17A) to 7.49(17A), subrule 7.50(7), and rules 7.51(17A) to 7.54(17A) to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

The form, status, finality and appealability of orders shall be controlled by the general provisions of 701—subrule 7.50(7), except that no appeal to or on motion of the state board of tax review or any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under 701—subrule 7.50(8). However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

REVENUE DEPARTMENT[701](cont'd)

If a claim is made that a particular entity is the tobacco product manufacturer and the entity obtains an order allowing it and any of the brands it claims to be responsible for to be listed in the directory pending final resolution of its status and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond shall be forfeited to the state.

These rules are intended to implement 2003 Iowa Acts, Senate File 375.

[Filed Emergency 7/18/03, effective 7/30/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2668B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 10, "Federal Family Education Loan Programs," Iowa Administrative Code.

The adopted amendments, which clarify the rules, are made pursuant to Executive Order Number 8. The amendments do not materially affect the administration of the program.

Notice of Intended Action was published in the April 30, 2003, Iowa Administrative Bulletin as **ARC 2435B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were approved during the July 8, 2003, meeting of the College Student Aid Commission.

These amendments will become effective September 10, 2003.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 10] is being omitted. These amendments are identical to those published under Notice as **ARC 2435B**, IAB 4/30/03.

[Filed 7/17/03, effective 9/10/03]
[Published 8/6/03]

[For replacement pages for IAC, see IAC Supplement 8/6/03.]

ARC 2667B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 14, "Osteopathic Physician Recruitment Program," Iowa Administrative Code.

The adopted amendments, which clarify the rules, are made pursuant to Executive Order Number 8. The amendments do not materially affect the administration of the program.

Notice of Intended Action was published in the April 30, 2003, Iowa Administrative Bulletin as **ARC 2434B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were approved during the July 8, 2003, meeting of the College Student Aid Commission.

These amendments will become effective September 10, 2003.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 14] is being omitted. These amendments are identical to those published under Notice as **ARC 2434B**, IAB 4/30/03.

[Filed 7/17/03, effective 9/10/03]
[Published 8/6/03]

[For replacement pages for IAC, see IAC Supplement 8/6/03.]

ARC 2666B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission rescinds Chapter 23, "Physician Loan Payments Program," Iowa Administrative Code.

This adopted amendment eliminates rules for a program for which there is no longer statutory authority and is made pursuant to Executive Order Number 8.

Notice of Intended Action was published in the April 30, 2003, Iowa Administrative Bulletin as **ARC 2440B**. No comments were received from the public. The adopted amendment is identical to that published under Notice.

This amendment was approved during the July 8, 2003, meeting of the College Student Aid Commission.

This amendment will become effective September 10, 2003.

This amendment is intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

The following amendment is adopted.

Rescind and reserve **283—Chapter 23**.

[Filed 7/17/03, effective 9/10/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2665B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 32, "Chiropractic Graduate Student Forgivable Loan Program," Iowa Administrative Code.

The adopted amendments, which clarify the rules, are made pursuant to Executive Order Number 8. The amendments do not materially affect the administration of the program.

Notice of Intended Action was published in the April 30, 2003, Iowa Administrative Bulletin as **ARC 2433B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

These amendments were approved during the July 8, 2003, meeting of the College Student Aid Commission.

These amendments will become effective September 10, 2003.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [32.1] is being omitted. These amendments are identical to those published under Notice as **ARC 2433B**, IAB 4/30/03.

[Filed 7/17/03, effective 9/10/03]
[Published 8/6/03]

[For replacement pages for IAC, see IAC Supplement 8/6/03.]

ARC 2664B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 35, "Teacher Shortage Forgivable Loan Program," Iowa Administrative Code.

The adopted amendments, which clarify the rules, are made pursuant to Executive Order Number 8. The amendments do not materially affect the administration of the program.

Notice of Intended Action was published in the April 30, 2003, Iowa Administrative Bulletin as **ARC 2432B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were approved during the July 8, 2003, meeting of the College Student Aid Commission.

These amendments will become effective September 10, 2003.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [35.1] is being omitted. These amendments are identical to those published under Notice as **ARC 2432B**, IAB 4/30/03.

[Filed 7/17/03, effective 9/10/03]
[Published 8/6/03]

[For replacement pages for IAC, see IAC Supplement 8/6/03.]

ARC 2663B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 36, "Governor Terry E. Branstad Iowa State Fair Scholarship Program," Iowa Administrative Code.

The adopted amendments, which clarify the rules, are made pursuant to Executive Order Number 8. The amendments do not materially affect the administration of the program.

Notice of Intended Action was published in the April 30, 2003, Iowa Administrative Bulletin as **ARC 2431B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were approved during the July 8, 2003, meeting of the College Student Aid Commission.

These amendments will become effective September 10, 2003.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [36.1] is being omitted. These amendments are identical to those published under Notice as **ARC 2431B**, IAB 4/30/03.

[Filed 7/17/03, effective 9/10/03]
[Published 8/6/03]

[For replacement pages for IAC, see IAC Supplement 8/6/03.]

ARC 2670B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

This amendment clarifies the criteria for an individual who wishes to convert an initial license to a standard license. It also clarifies the criteria for individuals who have teaching experience in an Iowa nonpublic school or from out-of-state and who desire a standard license. This amendment aligns wording pertaining to evaluation of new teachers with the rules submitted by the Department of Education.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 2003, as **ARC 2311B**. A public hearing on the amendment was held on March 18, 2003. No one attended the public hearing, and no written comments were received.

The adopted amendment has been modified from the noticed amendment as follows:

1. The phrase "two years' successful teaching experience," which had been stricken inadvertently, was reinserted;
2. The word "Iowa" has been added to the phrase "nonpublic school";
3. For clarification, the phrase "In lieu of this verification" has been changed to "In lieu of completion of an Iowa state-approved mentoring and induction program"; and
4. The phrase "within the last five years," which had been added, was not adopted in order to comply with 2003 Iowa Acts, House File 549.

This amendment is intended to implement Iowa Code chapter 284 (2001 Iowa Acts, chapter 161 [Senate File 476]).

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

This amendment will become effective September 10, 2003.

The following amendment is adopted.

Amend rule 282—14.112(272) as follows:

282—14.112(272) Requirements for a standard license. A standard license valid for five years may be issued to an applicant who:

1. Completes items "1" to "5" listed under 282—14.111(272).
2. Shows evidence of successful completion of a state-approved *mentoring and* induction program *by meeting the Iowa teaching standards as determined by a comprehensive evaluation and* ~~or an approved alternative option or~~ two years' successful teaching experience ~~based on a local evaluation process~~. *In lieu of completion of an Iowa state-approved mentoring and induction program, the applicant must provide evidence of three years' successful teaching experience in an Iowa nonpublic school or three years' successful teaching experience in an out-of-state K-12 educational setting.*
3. Meets the recency requirement of 14.115"3."

Renewal requirements for this license are set out in 282—Chapter 17.

[Filed 7/18/03, effective 9/10/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2657B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Administration," Iowa Administrative Code.

This amendment implements provisions of the Farm Security and Rural Investment Act of 2002 that affect food stamp eligibility for aliens. The law requires states to:

- Grant food stamp eligibility to legal immigrants aged 18 or under who are otherwise eligible, regardless of the date they entered the United States. Currently, aliens in this age group are not eligible for food stamps if they immigrated after August 22, 1996.
- Exclude the income and resources of a sponsor when determining food stamp eligibility and benefits for a legal immigrant who is aged 18 or under.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive provisions of federal law.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2490B**. The Department received no comment on the Notice of Intended Action. This amendment is identical to the Notice of Intended Action.

The Council on Human Services adopted this amendment on July 9, 2003.

This amendment is intended to implement Iowa Code section 234.12 and Public Law 107-171, Subtitle D, Section 4401.

This amendment shall become effective on October 1, 2003.

The following amendment is adopted.

Adopt **new** subrule 65.37(4) as follows:

65.37(4) Aliens aged 18 or under, regardless of their immigration date. The department shall exclude the income and resources of a sponsor when determining food stamp eligibility and benefits for an alien aged 18 or under.

[Filed 7/10/03, effective 10/1/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2642B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals amends Chapter 51, "Hospitals," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 11, 2003, as **ARC 2520B**.

The amendments update the Department's administrative rules by requiring that hospitals develop written policies and procedures regarding mandatory reporting requirements for abuse situations, incorporating recent changes made in the federal certification requirements for organ and tissue requests and procurement, and updating references to the Code of Federal Regulations (CFR) for the purpose of participation in the Medicare program.

Item 1 of the amendments requires that hospitals have written policies and procedures covering all requirements for the mandatory reporting of abuse pursuant to the Iowa Code. Items 2 through 14 clarify rules relating to organ and tissue requests and procurement, determination of death of a donor, determination of medical suitability, informed consent, confidentiality, and the training of hospital personnel. Items 15 and 16 update CFR references for Medicare conditions of participation for critical access hospitals and provide for the acceptance by the Department of hospital inspections performed by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA).

The amendments were reviewed by the Hospital Licensing Board at its March 5, 2003, meeting and unanimously approved by the members. The amendments also were presented to the State Board of Health for initial review at the Board's May 14, 2003, meeting. No comments were received from the Board members at that time. A public hearing on the amendments was held July 2, 2003, and no comments were received from the public. The adopted amendments are identical to those published under Notice.

The amendments were presented to the State Board of Health at its July 9, 2003, meeting at which time the amendments were approved by the Board.

These amendments shall become effective September 10, 2003.

These amendments are intended to implement Iowa Code section 10A.104(5) and chapters 135B and 235B.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

The following amendments are adopted.

ITEM 1. Amend subrule 51.7(4) as follows:

51.7(4) Child abuse and dependent adult abuse. *Each hospital shall ensure that written policies and procedures cover all requirements for the mandatory reporting of abuse pursuant to the Iowa Code.* Each hospital shall provide that the treatment records of victims of child abuse or dependent adult abuse include a statement that the department of human services protective services was contacted.

ITEM 2. Amend subrule 51.8(1), introductory paragraph, as follows:

51.8(1) Each hospital licensed *in accordance* with Iowa Code chapter 135B shall have in place written policies and protocols for organ and tissue donation. Hospital policies and protocols for organ and tissue donation shall require that the patient, or appropriate person able to consent on behalf of the patient, be made aware of the option to donate as well as the option to refuse donation and the ability, *if any,* to revoke consent once given.

ITEM 3. Amend paragraphs **51.8(1)"a"** and **"b"** as follows:

a. Hospitals shall be familiar with the uniform anatomical gift law, Iowa Code chapter 142C, and shall develop policies and protocols for consent to organ *and tissue* donation by either the patient or an appropriate person to consent on the patient's behalf consistent with that law's provisions.

b. Hospital policies and protocols for organ and tissue donation shall set forth the responsibilities of the attending physician or physicians, nursing staff, and other appropriate hospital staff persons in the organ *and tissue* donation process. At a minimum, the policies shall set forth who in particular is authorized to make an organ or tissue donor request and that all such requests shall be made only ~~when authorized by the attending physician or~~ in accordance with clearly delineated written protocol approved by the hospital's medical staff and governing board.

ITEM 4. Amend subparagraphs **51.8(1)"d"(1)**, **(2)** and **(4)** as follows:

(1) Where the patient is not medically suitable, *as determined by the organ or tissue procurement organization*;

(2) Where the hospital lacks ~~technical capability and expertise for determining medical suitability and~~ *the appropriate facilities or equipment* for maintaining the patient or the organs for the time and in the manner necessary to facilitate appropriate procurement of the ~~organ~~ *organ(s)*;

(4) Where the hospital has ~~actual knowledge~~ *appropriate documentation* that the patient or the appropriate person to consent on behalf of the patient does not want to consider the donation option ~~or that donation violates or is otherwise contrary to the religious beliefs of the patient or of the appropriate person to consent on behalf of the patient~~;

ITEM 5. Rescind subparagraph **51.8(1)"d"(5)**.

ITEM 6. Amend paragraphs **51.8(1)"e," "f"** and **"h"** as follows:

e. Hospital policies and protocols for organ *and tissue* donation shall require documentation in the patient's medical record of the fact that a donor request was made and either accepted or refused, stating to whom the request was made and who accepted or refused; or that a donor request was not made, stating the reason why no request was made; or that a consent previously given was subsequently revoked.

f. Method and manner of consent, where consent to organ or tissue donation has been given, shall be noted in the patient's medical record. Where revocation of consent, *if applicable,* occurs, the manner and method of revocation shall also be noted in the patient's medical record.

h. Hospital policies and protocols for organ *and tissue* donation shall provide for ongoing communication with the patient's family or other appropriate representatives regarding the donation process, the present status of that process and unexpected delays in the process, and family rights and responsibilities following organ or tissue donation.

ITEM 7. Amend paragraph **51.8(2)"c"** as follows:

c. The surgeon performing the organ removal shall not~~, except in unusual and necessary circumstances,~~ participate in the determination of brain death.

ITEM 8. Amend paragraph **51.8(3)"a"** as follows:

a. ~~No~~ *At or near the time of the patient's death or when death has occurred, no* organ *or tissue* donor request shall be made until the patient has been determined *by the designated organ or tissue procurement organization* to be medically suitable for organ or tissue donation.

ITEM 9. Rescind paragraph **51.8(3)"b."**

ITEM 10. Amend paragraph **51.8(3)"c"** as follows:

~~c~~ *b.* Each hospital shall consult with a recognized organ *and tissue* procurement program or programs in establishing medical requirements for organ and tissue donation and~~, where necessary,~~ in evaluating a particular patient's suitability for donation. Where required by federal law, hospitals shall ~~only~~ work *only* with organ *or tissue* procurement organizations designated by the Department of Health and Human Services (DHHS). Organ *and tissue* procurement programs maintain guidelines for determining medical suitability and generally will provide a hospital with a copy of those guidelines which may be incorporated into the hospital's own policies and protocol for organ *and tissue* donation.

ITEM 11. Amend paragraphs **51.8(4)"b," "e"** and **"g"** as follows:

b. Hospitals with ~~agreements~~ *an agreement* with ~~one or more OPOs~~ *the designated OPO* shall take into account the terms and conditions of ~~those agreements~~ *the agreement* in developing their policies and protocols. ~~Where required by federal law, hospitals~~ *Hospitals* shall contact only the OPO designated by the federal Department of Health and Human Services.

e. The procurement process shall not occur until necessary consent by the patient or appropriate person to consent on behalf of the patient is received and documented. Also, in cases requiring the involvement of the medical examiner, release of the body must be authorized ~~in writing~~ by the medical examiner and documented ~~in the patient's medical record~~.

g. Where consent has been given ~~to~~ *for* organ or tissue donation, *revocation of prior consent, if applicable, shall not be effective once surgical procedures have begun on either the donor or the recipient.* ~~revocation of that consent shall be consistent with the current guidelines set forth by Medicare and Medicaid programs. Revocation of prior consent shall not be effective once surgical procedures have begun on either the donor or the recipient.~~

ITEM 12. Amend subrule 51.8(5) as follows:

51.8(5) Informed consent. Hospital policies and protocols for organ and tissue donation shall be consistent with informed consent provisions ~~of the current guidelines set forth by Medicare and Medicaid programs~~ *provided by the organ or tissue procurement organization.*

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 13. Amend subrule 51.8(6) as follows:

51.8(6) Confidentiality. Hospital policies and protocols for organ and tissue donation shall provide that donor and recipient patient-identifying information shall be kept confidential except and only to the extent necessary to assist and complete the procurement and transplant ~~processes~~ *process*. ~~Hospital confidentiality policies for organ donor and recipient patients shall be consistent with the current guidelines set forth by Medicare and Medicaid programs.~~

ITEM 14. Amend subrule 51.8(7) as follows:

51.8(7) Training of hospital personnel. Hospital policies and protocols for organ and tissue donation shall include provisions for initial and ongoing training of hospital medical, nursing, and other appropriate staff persons regarding the various aspects of the organ *and tissue* donation and procurement process. The type and extent of training will vary from hospital to hospital, based on factors such as likelihood of medically suitable donors, capabilities for maintaining organ donors/patients, referral sources for potential organ *and tissue* donor candidates, and overall participation in organ and tissue procurement and transplants.

ITEM 15. Amend subrule 51.53(5) as follows:

51.53(5) The hospital shall meet the Medicare conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F, as of October 1, ~~1997~~ *2002*.

ITEM 16. Amend rule 481—51.53(135B) by adding a **new** subrule as follows:

51.53(7) The department shall recognize, in lieu of its own inspection, the comparable inspections and inspections findings of the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) if the department is provided with copies of all requested materials relating to the inspections and the inspection process.

[Filed 7/17/03, effective 9/10/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2641B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals amends Chapter 58, "Nursing Facilities," Chapter 60, "Minimum Physical Standards for Residential Care Facilities," and Chapter 61, "Minimum Physical Standards for Nursing Facilities," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 11, 2003, as **ARC 2521B**.

The amendments were presented to the State Board of Health for initial review at the Board's May 14, 2003, meeting. A public hearing on the amendments was held on July 3, 2003. Those present at the public hearing supported the amendments. In addition, the Department received five written comments on the amendments, two of which opposed the amendments citing possible medication errors and increased liability for nursing facility staffs. The Department fully considered the comments, but felt the overall financial savings to nursing facility residents and the state's Medicaid program outweighed the potential risk.

The amendments were presented to the State Board of Health at its July 9, 2003, meeting at which time they were approved by the Board. The adopted amendments are identical to those published under Notice.

The amendment to Chapter 58 stipulates that nursing facilities cannot require medications dispensed by the Veterans Administration to be repackaged in a drug distribution system compatible with the system used by the facility. The amendments to Chapters 60 and 61 allow for the use of certain surge protectors for consumer electronic devices located in residents' rooms or elsewhere in facilities.

These amendments shall become effective September 10, 2003.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendments are adopted.

ITEM 1. Amend rule 481—58.51(135C) as follows:

481—58.51(135C) Choice of physician *and pharmacy*. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility.

A facility shall not require the repackaging of medications dispensed by the Veterans Administration or an institution operated by the Veterans Administration for the purpose of making the drug distribution system compatible with the system used by the facility. (II)

ITEM 2. Amend subrule **60.12(1)**, paragraph **"c,"** as follows:

c. Drop cords, extension cords, or any type of flexible cord shall not be used as a substitute for fixed or hard wiring. *Surge protectors may be used for computers and related devices, facsimile, photocopying and scanning machines, and other consumer electronic devices in a resident's room and other locations in a facility provided the surge protector is of metal construction and approved by Underwriters Laboratories, Inc., or other similarly recognized laboratories.* Only fixed supplementary electric heating shall be installed. (III)

ITEM 3. Amend subrule 61.12(2) as follows:

61.12(2) Drop cords, extension cords, or any type of flexible cord shall not be used as a substitute for fixed or hard wiring. *Surge protectors may be used for computers and related devices, facsimile, photocopying and scanning machines, and other consumer electronic devices in a resident's room and other locations in a facility provided the surge protector is of metal construction and approved by Underwriters Laboratories, Inc., or other similarly recognized laboratories.* Only fixed supplementary electric heating shall be installed. (III)

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ARC 2677B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby amends Chapter 30, "Life Insurance Policies," Iowa Administrative Code.

This amendment authorizes the electronic delivery of group life insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.2(7), and as allowed by the Uniform Electronic Transactions Act, Iowa Code chapter 554D.

Notice of Intended Action for this amendment was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2529B**.

A public hearing was held at the Insurance Division on July 2, 2003. Comments were received that stated that insurance companies wanted a clear delineation of their duties and of the duties of the group policyholders under this new rule. In addition, insurers and a group policyholder commented that they would like to have the ability to deliver group insurance certificates to retirees and disabled employees electronically. After review, new subrules 30.8(3) and 30.8(4) were added to clearly distinguish the duties of the insurance company and the duties of the group policyholder. Subrule 30.8(4) in the Notice was deleted to allow delivery of group insurance certificates through electronic means to all persons that have reasonable access to a computer.

This amendment is intended to implement Iowa Code chapter 509.

This amendment will become effective September 10, 2003.

The following **new** rule is adopted.

191—30.8(509) Electronic delivery of group life insurance certificates.

30.8(1) Purpose. The purpose of this rule is to authorize the electronic delivery of group life insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.2(7), and as allowed by the uniform electronic transactions Act, Iowa Code chapter 554D.

30.8(2) Scope. This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508 and 515.

30.8(3) Electronic delivery—insurance companies. The insurer will be deemed to comply with the requirements of Iowa Code section 509.2(7) if the group insurance certificate is delivered to the group policyholder electronically and if:

a. The insurer takes appropriate and necessary measures to ensure that the system for furnishing group insurance certificates results in actual receipt of transmitted information by group policyholders, which can be done by:

(1) Using return-receipt electronic mail features;

(2) Periodic reviews or surveys to confirm receipt of the transmitted information; or

(3) Any other method approved by the insurance commissioner.

b. The electronic documents contain the same content and appear in reasonably the same format as the certificates previously approved by the insurance commissioner.

c. Each group policyholder is provided notice, through electronic means or in writing, apprising the group policyholder of the fact that the certificate will be furnished electronically, of the significance of the certificate and the group policyholder's obligations under this rule, and of the group policyholder's right to request and receive a paper copy of the document for each participant.

d. Upon request of any group policyholder, the insurer furnishes paper copies of the group insurance certificate that was delivered to the group policyholder electronically, so that the group policyholder may provide them to participants that have requested paper copies.

30.8(4) Electronic delivery—group policyholders. The group policyholder will be deemed to comply with the requirements of Iowa Code section 509.2(7) if the group insurance certificate is delivered to the individual plan member electronically and if:

a. The group policyholder takes appropriate and necessary measures to ensure that the system for furnishing group insurance certificates results in actual receipt of transmitted information by participants, which may be done by:

(1) Using return-receipt electronic mail features;

(2) Periodic reviews or surveys to confirm receipt of the transmitted information; or

(3) Any other method approved by the insurance commissioner.

b. The electronic documents contain the same content and appear in reasonably the same format as the certificates previously approved by the insurance commissioner.

c. Each participant is provided notice, through electronic means or in writing, apprising the participant of the fact that the certificate will be furnished electronically, of the significance of the certificate, and of the participant's right to request and receive, free of charge, a paper copy of the document.

d. Upon request of any participant, the group policyholder furnishes, free of charge, a paper copy of the group insurance certificate that was delivered to the participant electronically.

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ARC 2678B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby amends Chapter 35, "Accident and Health Insurance," Iowa Administrative Code.

This amendment authorizes the electronic delivery of accident and health group insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.3(2), and as allowed by the Uniform Electronic Transactions Act, Iowa Code chapter 554D.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2530B**.

A public hearing was held at the Insurance Division on July 2, 2003. Comments were received that stated that insurance companies wanted a clear delineation of their duties and of the duties of the group policyholders under this new rule. In addition, insurers and a group policyholder commented that they would like to have the ability to deliver group insurance certificates to retirees and disabled employees electronically. After review, new subrules 35.8(3) and 35.8(4) were added to clearly distinguish the duties of the insurance company and the duties of the group policyholder. Subrule 35.8(4) in the Notice was deleted to allow delivery of group insurance certificates through electronic means to all persons that have reasonable access to a computer.

This amendment is intended to implement Iowa Code chapter 509.

This amendment will become effective September 10, 2003.

The following **new** rule is adopted.

191—35.8(509) Electronic delivery of accident and health group insurance certificates.

35.8(1) Purpose. The purpose of this rule is to authorize the electronic delivery of accident and health group insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.3(2), and as allowed by the uniform electronic transactions Act, Iowa Code chapter 554D.

35.8(2) Scope. This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508 and 515.

35.8(3) Electronic delivery—insurance companies. The insurer will be deemed to comply with the requirements of Iowa Code section 509.3(2) if the group insurance certificate is delivered to the group policyholder electronically and if:

a. The insurer takes appropriate and necessary measures to ensure that the system for furnishing group insurance certificates results in actual receipt of transmitted information by group policyholders, which may be done by:

(1) Using return-receipt electronic mail features;

(2) Periodic reviews or surveys to confirm receipt of the transmitted information; or

(3) Any other method approved by the insurance commissioner.

b. The electronic documents contain the same content and appear in reasonably the same format as the certificates previously approved by the insurance commissioner.

c. Each group policyholder is provided notice, through electronic means or in writing, apprising the group policyholder of the fact that the certificate will be furnished electronically, of the significance of the certificate and the group policyholder's obligations under this rule, and of the group policyholder's right to request and receive a paper copy of the document for each participant.

d. Upon request of any group policyholder, the insurer furnishes paper copies of the group insurance certificate that was delivered to the group policyholder electronically, so that the group policyholder may provide them to participants that have requested paper copies.

35.8(4) Electronic delivery—group policyholders. The group policyholder will be deemed to comply with the requirements of Iowa Code section 509.3(2) if the group insurance certificate is delivered to the individual plan member electronically and if:

a. The group policyholder takes appropriate and necessary measures to ensure that the system for furnishing group insurance certificates results in actual receipt of transmitted information by participants, which may be done by:

(1) Using return-receipt electronic mail features;

(2) Periodic reviews or surveys to confirm receipt of the transmitted information; or

(3) Any other method approved by the insurance commissioner.

b. The electronic documents contain the same content and appear in reasonably the same format as the certificates previously approved by the insurance commissioner.

c. Each participant is provided notice, through electronic means or in writing, apprising the participant of the fact that the certificate will be furnished electronically, of the significance of the certificate, and of the participant's right to request and receive, free of charge, a paper copy of the document.

d. Upon request of any participant, the group policyholder furnishes, free of charge, a paper copy of the group insurance certificate that was delivered to the participant electronically.

This rule is intended to implement Iowa Code chapter 509.

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ARC 2651B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 235B.16, and 272C.2, the Board of Pharmacy Examiners hereby amends Chapter 2, "Pharmacist Licenses," Iowa Administrative Code.

The amendments establish a time period during which internship experience will be considered valid for licensure, and limit Board-approved and recognized college of pharmacy certification to United States institutions. The amendments also establish requirements for training for those pharmacists qualifying as mandatory abuse reporters, identify persons exempt from training, identify approved training programs, establish requirements for maintenance of training records, and provide that mandatory abuse reporter training is a requirement for license renewal for those individuals identified as mandatory abuse reporters.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the April 16, 2003, Iowa Administrative Bulletin as **ARC 2410B**. The adopted amendments are identical to those published under Notice.

The amendments were adopted during the June 24-25, 2003, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on September 10, 2003.

PHARMACY EXAMINERS BOARD[657](cont'd)

These amendments are intended to implement Iowa Code sections 155A.6, 155A.8, 235B.16, and 272C.2.

The following amendments are adopted.

ITEM 1. Amend rule 657—2.4(155A) as follows:

657—2.4(155A) Internship requirements. Each applicant shall furnish to the board evidence certifying completion of satisfactory internship experience. Internship experience shall comply with the requirements in 657—Chapter 4. *Internship experience completed in compliance with the requirements in 657—Chapter 4 shall be valid for application for licensure in Iowa by examination or score transfer for a period of three years following graduation from an approved college of pharmacy or as otherwise approved by the board on a case-by-case basis.*

ITEM 2. Amend rule 657—2.5(155A) as follows:

657—2.5(155A) College graduate certification. Each applicant shall furnish a certificate from a recognized college of pharmacy stating that the applicant has successfully graduated from a school or college of pharmacy with either a bachelor of science degree in pharmacy or a doctor of pharmacy (Pharm.D.) degree. Certification shall be completed by an individual authorized by the college on a form provided by the board. A recognized college of pharmacy is ~~an~~ *a United States* institution that meets the minimum standards of the American Council on Pharmaceutical Education and appears on its list of accredited colleges of pharmacy published by the council as of July 1 of each year.

ITEM 3. Amend subrule 2.12(5) as follows:

2.12(5) New license holders licensed by examination. After the initial license is issued by examination, the new license holder is exempt from meeting continuing education requirements for the first license renewal. *However, if the licensee qualifies as a mandatory abuse reporter, the licensee shall not be exempt from mandatory training for identifying and reporting abuse pursuant to rule 2.16(235B,272C).* Regardless of when the license is first issued, the new license holder will be required to obtain, prior to the second renewal, 30 contact hours (3.0 CEUs) of continuing education pursuant to subrules 2.12(1) through 2.12(4).

ITEM 4. Adopt **new** rule 657—2.16(235B,272C) as follows:

657—2.16(235B,272C) Mandatory training for identifying and reporting abuse. "Mandatory training for identifying and reporting abuse" means training on identifying and reporting child abuse or dependent adult abuse required of a pharmacist who qualifies as a mandatory abuse reporter under Iowa Code section 232.69 or 235B.16. A licensed pharmacist shall be responsible for determining whether or not, by virtue of the pharmacist's practice or employment, the pharmacist qualifies as a mandatory abuse reporter under either or both of these sections.

2.16(1) Training required. A licensed pharmacist who qualifies as a mandatory abuse reporter shall have completed approved abuse education training as follows.

a. Mandatory reporter of child abuse. A pharmacist who qualifies as a mandatory reporter of child abuse shall have completed two hours of training in child abuse identification and reporting within the previous five years.

b. Mandatory reporter of dependent adult abuse. A pharmacist who qualifies as a mandatory reporter of dependent adult abuse shall have completed two hours of training in dependent adult abuse identification and reporting within the previous five years.

c. Mandatory reporter of child abuse and dependent adult abuse. A pharmacist who qualifies as a mandatory reporter of child abuse and dependent adult abuse may complete separate courses pursuant to paragraphs "a" and "b" or may complete, within the previous five years, one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.

2.16(2) Persons exempt from training requirements. The requirements of this rule shall not apply to a pharmacist during periods that the pharmacist serves honorably on active duty in the military or during periods that the pharmacist resides outside Iowa and does not practice pharmacy in Iowa.

2.16(3) Mandatory training records. A pharmacist subject to the requirements of this rule shall maintain documentation of completion of the mandatory training for identifying and reporting abuse, including dates, subjects, duration of programs, and proof of participation, for five years following the date of the training. The board may audit this information at any time within the five-year period.

2.16(4) Approved programs. "Approved abuse education training" means a training program using a curriculum approved by the abuse education review panel of the Iowa department of public health.

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ARC 2650B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendments clarify the status required of the original prescription drug order at the time of transfer of an order for noncontrolled prescription drugs between pharmacies and provide a time limit within which a pharmacy utilizing an alternative data retention system must be able to produce a hard copy of the record maintained in that system.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the April 16, 2003, Iowa Administrative Bulletin as **ARC 2409B**. The adopted amendments are identical to those published under Notice.

The amendments were adopted during the June 24-25, 2003, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on September 10, 2003.

These amendments are intended to implement Iowa Code sections 124.306, 155A.13, 155A.34, and 155A.35.

The following amendments are adopted.

ITEM 1. Amend subrule 6.9(2) as follows:

6.9(2) Noncontrolled substances prescriptions. The transfer of original prescription drug order information for noncontrolled prescription drugs between pharmacies is permissible as long as the number of transfers does not exceed

the number of originally authorized refills *and the original prescription is still valid*.

ITEM 2. Amend subrule **6.16(4)**, paragraph **"b,"** as follows:

b. The data processing system is capable of producing a hard copy of the record, *within two business days*, upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

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ARC 2649B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 22, "Unit Dose, Alternative Packaging, and Emergency Boxes," Iowa Administrative Code.

The amendment authorizes a pharmacy to include normal saline for irrigation in the emergency drug supply provided for the use of home health agency or hospice personnel.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the April 16, 2003, Iowa Administrative Bulletin as **ARC 2408B**. The adopted amendment is identical to that published under Notice.

The amendment was adopted during the June 24-25, 2003, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on September 10, 2003.

This amendment is intended to implement Iowa Code sections 155A.4, 155A.13, and 155A.15.

The following amendment is adopted.

Amend subrule **22.9(5)** by adding **new** paragraph **"o"** as follows and relettering existing paragraphs **"o"** to **"q"** as **"p"** to **"r"**:

o. Normal saline for irrigation;

[Filed 7/15/03, effective 9/10/03]
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ARC 2648B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.4, the Board of Pharmacy Examiners hereby amends Chapter 36, "Discipline," Iowa Administrative Code.

The amendments change the grounds for disciplinary action to include a licensee's default on a repayment or service obligation under any federal or state educational loan or service-conditional scholarship program or for a licensee's failure to comply with mandatory child or dependent adult abuse reporter training requirements. The amendments also correct an erroneous cross reference found in subrule 36.1(4), paragraph "q." The cross reference should be to subrule 36.2(3).

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the April 16, 2003, Iowa Administrative Bulletin as **ARC 2407B**. The adopted amendments differ from those published under Notice. An amendment has been added to correct the cross reference in subrule 36.1(4), paragraph "q."

The amendments were adopted during the June 24-25, 2003, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on September 10, 2003.

These amendments are intended to implement Iowa Code sections 147.55, 155A.12, 235B.16, 261.126, and 272C.4.

The following amendments are adopted.

ITEM 1. Amend subrule **36.1(4)**, paragraph **"q,"** as follows:

q. Failure to file the reports required by subrule ~~36.2(4)~~ *36.2(3)* concerning acts or omissions committed by another licensee or registrant.

ITEM 2. Amend subrule **36.1(4)**, paragraph **"y,"** as follows:

y. Student loan default or noncompliance with the terms of an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 *or default on a repayment or service obligation under any federal or state educational loan or service-conditional scholarship program upon certification by the program of such a default*.

ITEM 3. Amend subrule **36.1(4)** by adopting **new** paragraph **"af"** as follows:

af. Failure to comply with mandatory child or dependent adult abuse reporter training requirements.

[Filed 7/15/03, effective 9/10/03]
[Published 8/6/03]

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ARC 2682B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 135.11, 144A.7A and 147A.4, the Department of Public Health hereby adopts Chapter 142, "Out-of-Hospital Do-Not-Resuscitate Orders," Iowa Administrative Code.

The rules in new Chapter 142 are not intended to change the current practice of medicine in hospitals or other care fa-

cilities but are intended to streamline the care of any patient who has a known terminal condition to ensure that medical care provided in the out-of-hospital setting is consistent with the patient's desire and the attending physician's authorization. The out-of-hospital setting may include a medical care facility, a hospice setting, or the patient's own home while the patient remains active in the community or when the patient interfaces with the emergency medical services (EMS) system.

Since June 2002, a broad group of stakeholders has met numerous times and was instrumental in the development of these rules, which have been approved by all the stakeholders and by the EMS Advisory Council at its January meeting. This stakeholders group was open to any individual or organization; some of the organizations participating were:

Aging Resources
Bureau of EMS/Department of Public Health
Iowa Academy of Family Physicians
Iowa Emergency Medical Services Association
Iowa Hospital Association
Iowa Nurses Association
Iowa Medical Society
Hospice of Central Iowa
Iowa Trial Lawyers Association
Polk County Medical Society

Notice of Intended Action was published in the May 28, 2003, Iowa Administrative Bulletin as **ARC 2491B**.

A public hearing was held June 17, 2003. No one attended the hearing, but written comments were received. Following is a summary of the comments and of the changes from the Notice that have been made in response to comment:

1. St. Luke's Hospice of Cedar Rapids requested that faxes of out-of-hospital do-not-resuscitate orders be honored because mailed orders may arrive too late. No change was made as a result of the comment because the decision to recognize a faxed order is one that should be made by the agency or organization and should not be set forth in rule.

2. The Iowa Medical Society requested that references to "legal agent" in Appendix A be changed to "legal representative." This change has been made.

3. The Iowa Hospice Organization suggested a change in the definition of "emergency medical care" and requested that the words "or respiratory" be inserted after the word "cardiac" in paragraph "4" of Appendix B. The change to paragraph "4" has been made, but the definition of "emergency medical care" has not been changed because it mirrors the definition in Iowa Code section 147A.1.

4. The Iowa Nurses Association requested that the definition of "physician designee" be reworded to clarify that the out-of-hospital do-not-resuscitate protocol is a physician protocol. No change was made because the definition conforms to the definition of "physician designee" in rule 641—132.1(147A).

Other changes from the Notice include the addition of Appendixes A and B and changes to some of the definitions to conform to definitions in the Iowa Code or in rules.

The State Board of Health adopted these rules on July 9, 2003.

These rules will become effective on September 10, 2003.

These rules are intended to implement Iowa Code sections 144A.7A and 147A.4.

The following **new** chapter is adopted.

CHAPTER 142
OUT-OF-HOSPITAL
DO-NOT-RESUSCITATE ORDERS

641—142.1(144A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Adult" means an individual 18 years of age or older.

"Attending physician" means a physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

"Comfort care" means care within the scope of the health care provider's training and certification to alleviate pain and suffering, but does not include resuscitative measures.

"Department" means the Iowa department of public health.

"Emergency medical care" means such medical procedures as:

1. Administration of intravenous solutions.
2. Intubation.
3. Performance of cardiac defibrillation and synchronized cardioversion.
4. Administration of emergency drugs as provided by rule by the department.
5. Any other medical procedure approved by the department, by rule, as appropriate to be performed by emergency medical care providers who have been certified in that procedure.

"EMS provider" means an emergency medical care provider as defined in Iowa Code section 147A.1.

"Health care provider" means a person, including an emergency medical care provider, who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

"Hospital" means any hospital licensed under the provisions of Iowa Code section 135B.1.

"Life-sustaining procedure" means any medical procedure, treatment, or intervention, including resuscitation, which utilizes mechanical or artificial means to sustain, restore or supplant a spontaneous vital function, and when applied to a patient in a terminal condition, would serve only to prolong the dying process. "Life-sustaining procedure" does not include the provision of nutrition or hydration except when required to be provided parenterally or through intubation or the administration of medication or performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

"Medical direction" means direction, advice, or orders provided by a medical director, supervising physician, or physician designee (in accordance with written parameters and protocols) to emergency medical care providers.

"Medical director" means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of assuming duties.

"On-line medical direction" means immediate medical direction provided directly to service program emergency medical care providers, in accordance with written parameters and protocols, by the medical director, supervising physician or physician designee either on scene or by any telecommunications system.

"Out-of-hospital do-not-resuscitate identifier" or "OOH DNR identifier" means a durable yet easily removable unique identification approved by the department and worn by a patient who has an out-of-hospital do-not-resuscitate order.

"Out-of-hospital do-not-resuscitate order" or "OOH DNR order" means a written order on a form approved by the department, signed by an attending physician, executed in accordance with the requirements of Iowa Code section

144A.7A and issued consistent with Iowa Code section 144A.2, that directs the withholding or withdrawal of resuscitation when an adult patient in a terminal condition is outside the hospital.

"Out-of-hospital do-not-resuscitate protocol" or "OOH DNR protocol" means the statewide protocol approved by the department and intended to avoid unwarranted resuscitation by emergency medical care providers when a valid out-of-hospital do-not-resuscitate order or identifier is encountered.

"Patient" means any individual who is sick, injured, or otherwise incapacitated.

"Physician" means any individual licensed under Iowa Code chapter 148, 150, or 150A.

"Physician assistant" or "PA" means an individual licensed pursuant to Iowa Code chapter 148C.

"Physician designee" means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners. The physician designee acts as an intermediary for a supervising physician in accordance with written policies and protocols in directing the actions of emergency medical care providers.

"Qualified patient" means any adult patient as defined in Iowa Code section 144A.2.

"Registered nurse" or "RN" means an individual licensed pursuant to Iowa Code chapter 152.

"Resuscitation" means any medical intervention that utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, including but not limited to chest compression, defibrillation, intubation, and emergency drugs intended to alter cardiac function or otherwise to sustain life.

"Service program" or "service" means any medical care ambulance service or nontransport service that has received authorization by the department.

"Supervising physician" means any physician licensed under Iowa Code chapter 148, 150, or 150A. The supervising physician is responsible for medical direction of emergency medical care providers when such providers are providing emergency medical care.

"Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery.

641—142.2(144A) Purpose. These rules direct EMS providers and service programs on the processes for the recognition of OOH DNR orders or identifiers and implementation of the OOH DNR protocol. In addition, these rules set forth guidelines for consideration by health care providers and organizations to help ensure uniform and orderly understandings, processes and procedures for the use and implementation of OOH DNR orders consistent with the provisions of Iowa Code chapter 144A.

641—142.3(144A,147A) Responsibilities of the department.

142.3(1) OOH DNR physician order. The department designates the OOH DNR order form contained in Appendix A as the uniform OOH DNR order form to be used statewide. If an attending physician issues an OOH DNR order for a qualified patient, the physician shall use the form contained in Appendix A.

142.3(2) OOH DNR personal identifier. The department designates the indentifier supplied by MedicAlert® as the uniform personal identifier to be used for mobile qualified patients statewide. Instructions for obtaining a uniform personal identifier are contained in Appendix A.

142.3(3) OOH DNR protocol. The department designates the OOH DNR protocol contained in Appendix B as the uniform protocol to be used by EMS providers in implementing an OOH DNR order.

142.3(4) Appendix A and Appendix B forms. Forms referenced in subrules 142.3(1) through 142.3(3) are available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or through the bureau of EMS's Web site at www.idph.state.ia.us/ems.

641—142.4(144A,147A) EMS providers.

142.4(1) Uniform protocol. EMS providers shall act in accordance with the department's OOH DNR protocol when implementing an OOH DNR order. EMS service programs shall incorporate the OOH DNR protocol as part of their service protocols and, using educational materials consistent with the curriculum developed and approved by the department, shall inform and educate EMS providers on the protocol's requirements as well as the requirements of Iowa Code chapter 144A and these rules.

142.4(2) Responsibility of the EMS provider. The EMS provider responding outside a hospital as a member of a service program shall:

a. Evaluate the patient's status and needs through an assessment consistent with the provider's training and certification.

b. Determine the existence of an OOH DNR order or that the patient is wearing an OOH DNR identifier.

c. Honor the OOH DNR order or OOH DNR identifier worn by the patient.

d. Discontinue resuscitation if the OOH DNR order or OOH DNR identifier worn by the patient is discovered after resuscitation has begun.

e. Follow the OOH DNR protocol.

f. Provide comfort care to the patient at all times.

g. Contact on-line medical direction for further instructions as necessary to provide appropriate patient care.

h. If uncertainty exists regarding the validity or applicability of the OOH DNR order or identifier, the EMS provider shall provide the necessary and appropriate resuscitation.

i. Document compliance or noncompliance with the OOH DNR order and the reasons for not complying with the order, including evidence that the order was revoked or uncertainty regarding the validity or applicability of the order.

641—142.5(144A) Guidelines for non-EMS health care providers, patients, and organizations. In order to encourage understanding and implementation of OOH DNR orders and protocols throughout Iowa and honor a qualified patient's wishes and intent regarding the provision of life-sustaining procedures in an out-of-hospital setting consistent with the requirements of Iowa Code chapter 144A, the following guidelines should be considered.

142.5(1) Attending physicians who issue OOH DNR orders. The attending physician should ensure that the following are accomplished:

a. Establish that the patient is qualified because the patient:

(1) Is an adult; and

(2) Has a terminal condition.

b. Explain to the patient or the individual legally authorized to act on the patient's behalf the implications of an OOH DNR order.

c. If the qualified patient or individual legally authorized to act on the patient's behalf decides that the patient should not be resuscitated, the attending physician may issue the OOH DNR order on the prescribed uniform order form. The order will direct health care providers to withhold or withdraw resuscitation.

d. Explain to the qualified patient or the individual legally authorized to act on the patient's behalf how the OOH DNR order is revoked.

e. Include a copy of the order in the qualified patient's medical record.

f. Provide a copy of the order to the qualified patient or the individual legally authorized to act on the patient's behalf.

142.5(2) Qualified patients or legally authorized persons. A qualified patient or a person legally authorized to act on a qualified patient's behalf should:

a. Make an informed decision concerning resuscitation in the face of a terminal condition.

b. Ensure that the qualified patient's family members are aware of this decision and inform them of the location of the OOH DNR order and the purpose of an OOH DNR identifier.

c. Understand the process for revocation as described in rule 641—142.6(144A).

142.5(3) Non-EMS health care providers. A non-EMS health care provider contemplating resuscitation for a patient should:

a. Evaluate the patient's status and needs through an assessment consistent with the provider's training, certification and licensure.

b. Determine that the presenting condition is within the scope of the patient's terminal condition and is not the result of a motor vehicle collision, fire, mass casualty or other cause of a sudden accident or injury.

c. Determine the existence of an OOH DNR order or that the patient is wearing an OOH DNR identifier.

d. Honor the OOH DNR order or OOH DNR identifier worn by the patient.

e. Discontinue resuscitation if the OOH DNR order or OOH DNR identifier worn by the patient is discovered after resuscitation has begun.

f. Provide comfort care to the patient at all times.

g. If uncertainty exists regarding the validity or applicability of the OOH DNR order or identifier, the health care provider shall provide the necessary and appropriate resuscitation.

h. Document compliance or noncompliance with the OOH DNR order and the reasons for not complying with the order, including evidence that the order was revoked or uncertainty regarding the validity or applicability of the order or OOH DNR identifier.

142.5(4) Hospitals. A hospital licensed under Iowa Code chapter 135B:

a. Shall not be precluded from honoring an OOH DNR order entered in accordance with this chapter and in compliance with established hospital policies and protocols.

b. Should, to avail itself of the immunities provided within Iowa Code chapter 142, establish such policies and protocols to address an OOH DNR order or identifier encountered on a person who presents to the emergency department or in any other area within the facility if the person presents as a patient or visitor.

c. Should integrate policies and procedures with the OOH DNR protocol for hospital-based ambulance service programs, if present.

142.5(5) Other health care organizations. A nursing home, home health care agency, hospice, or other health care organization should establish policies and protocols consistent with these rules to address admitted patients who have OOH DNR orders.

641—142.6(144A) Revocation of the out-of-hospital do-not-resuscitate order. An OOH DNR order is deemed revoked at any time that a patient, or an individual authorized to act on the patient's behalf as designated on the OOH DNR order, is able to communicate in any manner the intent that the order be revoked, without regard to the mental or physical condition of the patient. A revocation is only effective as to the health care provider upon communication to that provider by the patient, an individual authorized to act on the patient's behalf as designated in the OOH DNR order, or by another person to whom the revocation is communicated by the patient.

641—142.7(144A) Personal wishes of family members or other individuals who are not authorized to act on the patient's behalf. The personal wishes of family members or other individuals who are not authorized in the order to act on the patient's behalf shall not supersede a valid OOH DNR order.

641—142.8(144A) Transfer of patients.

142.8(1) An attending physician who is unwilling to comply with an OOH DNR order or who is unwilling to comply with the provisions of Iowa Code section 144A.7A shall take all reasonable steps to effect the transfer of the patient to another physician.

142.8(2) If the policies of a hospital, nursing home, home health care agency, hospice or other health care organization preclude compliance with the OOH DNR order of a qualified patient, the provider shall take all reasonable steps to effect the transfer of the patient to an organization in which the provisions of Iowa Code section 144A.7A can be carried out.

641—142.9(144A) Application to existing orders.

142.9(1) An OOH DNR order or similar order executed prior to September 10, 2003, is valid and shall be honored in accordance with the then-applicable provisions of the law.

142.9(2) Health care providers may honor an OOH DNR order or identifier from another state if it can be validated and applied in a manner consistent with the OOH DNR order or identifier prescribed in these rules. In cases where there is uncertainty, clarification should be sought through on-line medical direction or resuscitation efforts should be initiated.

These rules are intended to implement Iowa Code sections 144A.7A and 147A.4.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

APPENDIX A

Iowa Department of Public Health
OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDER
(Please type or print)

Date of Order: ____/_____/_____

Patient Information:

Name: (Last)_____(First)_____(Middle)_____

Address: _____(City)_____(Zip)_____

Date of Birth: ____/_____/____ Gender (Circle): M or F

Name of Hospice or Care Facility (if applicable): _____

_____

Attending Physician Order

As the attending physician for the above-named patient, I certify that this individual is over 18 years of age and has a terminal diagnosis. After consultation with this patient (or the patient's legal representative), I hereby direct any and all health care providers, including qualified emergency medical services (EMS) personnel, to withhold or withdraw the following life-sustaining procedures in accordance with Iowa law (Iowa Code chapter 142A):

- Cardiopulmonary Resuscitation/Cardiac Compression (Chest Compressions).
- Endotracheal Intubation/Artificial or Mechanical Ventilation (Advance Airway Management).
- Defibrillation and Related Procedures.
- Use of Resuscitation Drugs.

This directive does NOT apply to other medical interventions for comfort care.

_____ ____/____/____
Signature of Attending Physician (MD, DO) **Date**

_____ (___) ___-_____
Printed Name of Attending Physician **Physician's Telephone (Emergency)**

To the extent that it is possible, a person designated by the patient may revoke this order on the patient's behalf. If the patient wishes to authorize any other person(s) to revoke this order, the patient MUST list those persons' names below:

Name: _____

Name: _____

Name: _____

Name: _____

Patients please note: Directions for obtaining a uniform identifier are listed on the back of this form. The uniform identifier is the key way the health care provider and/or EMS personnel can quickly recognize that you have an Out-of-Hospital Do-Not-Resuscitate order. If you are not wearing an identifier, the health care provider and/or EMS personnel may not realize that you do not want to be resuscitated.

Physicians please note: Information regarding the completion of an Out-of-Hospital Do-Not-Resuscitate order is on the back of this form.

Directions for obtaining a uniform identifier:

The uniform identifier may be obtained through MedicAlert®[1], which requires:

1. A completed MedicAlert® application, which is available in physician offices or through MedicAlert® by phoning (880) 432-5378 or their Web site www.medicalert.org, and a new membership fee of $35.
2. A copy of this completed OOH DNR order, which must accompany the MedicAlert® application or be sent to MedicAlert® prior to the identifier's being mailed.

[1]MedicAlert® is a nonprofit 501C membership organization.

Suggested guidelines for physicians:

1. Please review the Iowa Out-of-Hospital Do-Not-Resuscitate order and related protocol with the patient/patient's legal representative(s). The following points may be helpful:
   - Patient/patient's legal representative(s) listed on this order must understand the significance of this order, that in the event the patient's heart or breathing stops or malfunctions, the anticipated result of this order is death.
   - Patient/patient's legal representative(s) listed on this order may revoke this directive at any time. However, the desire to revoke must be communicated to the EMS or other health care professionals at the scene.
   - It is important to emphasize that this order does not apply to medical interventions to make the patient more comfortable.
   - The importance of wearing the uniform identifier for those qualified patients who would benefit from the mobility this offers should be stressed. It is also helpful to walk patients through the process they must follow to acquire the identifier.
2. Provide a copy of this order to the patient/patient's legal representative(s) listed on this order and place the original in the patient's medical records.

The OOH DNR Order form is available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or through the Bureau of EMS's Web site www.idph.state.ia.us/ems.

APPENDIX B

EMS OUT-OF-HOSPITAL DO-NOT-RESUSCITATE PROTOCOL

Purpose: This protocol is intended to avoid unwarranted resuscitation by emergency care providers in the out-of-hospital setting for a qualified patient.[1] There must be a valid Out-of-Hospital Do-Not-Resuscitate (OOH DNR) order signed by the qualified patient's attending physician or the presence of the OOH DNR identifier indicating the existence of a valid OOH DNR order.

No resuscitation: Means withholding any medical intervention that utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, including but not limited to:
1. Chest compressions,
2. Defibrillation,
3. Esophageal/tracheal/double-lumen airway; endotracheal intubation, or
4. Emergency drugs to alter cardiac or respiratory function or otherwise sustain life.

Patient criteria: The following patients are recognized as qualified patients to receive no resuscitation:
1. The presence of the uniform OOH DNR order or uniform OOH DNR identifier, or
2. The presence of the attending physician to provide direct verbal orders for care of the patient.

The presence of a signed physician order on a form other than the uniform OOH DNR order form approved by the department may be honored if approved by the service program EMS medical director. However, the immunities provided by law apply only in the presence of the uniform OOH DNR order or uniform OOH DNR identifier. When the uniform OOH DNR order or uniform OOH DNR identifier is not present, contact must be made with on-line medical control and on-line medical control must concur that no resuscitation is appropriate.

Revocation: An OOH DNR order is deemed revoked at any time that a patient, or an individual authorized to act on the patient's behalf as listed on the OOH DNR order, is able to communicate in any manner the intent that the order be revoked. The personal wishes of family members or other individuals who are not authorized in the order to act on the patient's behalf shall not supersede a valid OOH DNR order.

Comfort Care (♥): When a patient has met the criteria for no resuscitation under the foregoing information, the emergency care provider should continue to provide that care which is intended to make the patient comfortable (a.k.a. **♥ Comfort Care**). Whether other types of care are indicated will depend upon individual circumstances for which medical control may be contacted by or through the responding ambulance service personnel.

♥ **Comfort Care** may include, but is not limited to:
1. Pain medication.
2. Fluid therapy.
3. Respiratory assistance (oxygen and suctioning).

[1]Qualified patient means an adult patient determined by an attending physician to be in a terminal condition for which the attending physician has issued an Out-of-Hospital DNR order in accordance with the law. (Iowa Administrative Code 641—142.2(144A), definitions)

[Filed 7/18/03, effective 9/10/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2661B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on July 15, 2003, adopted amendments to Chapter 201, "Intermodal Pilot Project Program," Chapter 800, "Items of General Application," Chapter 802, "Reporting of Railroad Accidents/Incidents," Chapter 810, "Railroad Safety Standards," Chapter 811, "Highway-Railroad Grade Crossing Warning Devices," Chapter 820, "Highway Grade Crossing Safety Fund," Chapter 821, "Highway-Railroad Grade Crossing Surface Repair Fund," Chapter 830, "Rail Assistance Program," and Chapter 831, "Railroad Revolving Loan Fund," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the May 14, 2003, Iowa Administrative Bulletin as **ARC 2464B**.

Amendments to these chapters were identified as a result of reviews conducted in accordance with Executive Order Number 8. The amendments correct the name of the Department's contact office for rail matters, change Interstate Commerce Commission to Surface Transportation Board, update citations to Iowa statutes and the Code of Federal Regulations, simplify procedures, remove verbiage that is unnecessary or redundant, and make other minor corrections. More significant revisions are discussed in the following paragraphs:

Item 6 rescinds subrule 201.5(4), which requires the Department to publish a newspaper announcement of each complete intermodal project application submitted and to receive comments for 20 days after publication. This is not done for any other rail-related application.

Item 7 deletes a requirement that the staff's recommendation on an intermodal project application be sent to the Commissioners and applicant at least 14 days in advance of the Commission meeting. This is a mailing separate from the standard process used for distributing Commission meeting agendas and related materials.

Item 14 amends subrule 800.15(4), which pertains to the Department's approval of a local train speed ordinance or resolution, to comply with an Attorney General's opinion. The amended language provides that the Department may approve the proposed ordinance or resolution only if the proposal satisfies the requirements of 49 U.S.C. 20106: (1) it is necessary to eliminate or reduce a local safety hazard; (2) it is not incompatible with a federal law, regulation or order; and (3) it does not unreasonably burden interstate commerce. Amended subrule 800.15(4) also provides that generally, the Department does not consider highway-railroad grade crossings or rail lines located near schools, residences, or commercial activities to be local safety hazards that can be remedied by train speed restrictions.

Item 26 rewrites four rules pertaining to the highway grade crossing safety fund. References to the use of the grade crossing safety fund to install active warning devices have been deleted. The fund is no longer used for this purpose. Rather, the grade crossing safety fund is used to participate in the maintenance cost of active warning devices ordered or agreed to be installed on or after July 1, 1973, as stated in the individual orders or agreements. The revised rules also more accurately reflect the way reimbursements of maintenance costs are processed.

Item 27 amends 761—Chapter 821, which pertains to the use of the grade crossing surface repair fund. This chapter is being amended to streamline the agreement process and involve the Department more directly in the final acceptance of surface repair projects.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Item 8 has changed from the Notice of Intended Action. Two references to "Iowa energy fund disbursement council" were changed to "department of natural resources" and the following two sentences were deleted: "Pursuant to Iowa Code section 473.11, the Iowa energy fund disbursement council will be dissolved on June 30, 2003. Thereafter, the department will submit projects to the department of natural resources rather than the Iowa energy fund disbursement council." Subrule 201.8(3) in Item 8 now reads as follows:

"**201.8(3)** If financial assistance is approved by the commission, the department shall submit the project to the department of natural resources for approval. If the project is approved by the department of natural resources, the department shall submit the project to the U.S. Department of Energy for approval."

These amendments are intended to implement Iowa Code chapters 307, 327C, 327F, 327G, and 327H.

These amendments will become effective September 10, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 201, 800, 802, 810, 811, 820, 821, 830, 831] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2464B**, IAB 5/14/03.

[Filed 7/15/03, effective 9/10/03]
[Published 8/6/03]

[For replacement pages for IAC, see IAC Supplement 8/6/03.]

ARC 2681B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, and 476.20 (2003), the Utilities Board (Board) issued an "Order Adopting Amendments" on July 18, 2003, In re: Customer Rights and Remedies to Avoid Disconnection. The amendments modify the disconnection notice set out in 199 IAC 19.4(15)"h"(3) and 20.4(15)"h"(3). This proceeding has been identified as Docket No. RMU-03-2.

On February 5, 2003, the Board issued an order in Docket No. RMU-03-2, which proposed modifications to the standard notice sent to customers who were subject to disconnection for nonpayment of electric or gas bills. Notice of Intended Action was published in IAB Vol. XXV, No. 16 (2/5/03) pp. 1079-1083, as **ARC 2285B**. The proposed amendments to the rights and remedies notice are designed to make the notice more understandable to each customer and to

ensure the notice is consistent with the Board's rules on disconnection of gas and electric service.

Comments addressing the amendments were filed by the Iowa Association of Electric Cooperatives (IAEC); Aquila, Inc., d/b/a Aquila Networks (Aquila); the Consumer Advocate Division of the Department of Justice (Consumer Advocate); MidAmerican Energy Company (MidAmerican); the Iowa Association of Municipal Utilities (IAMU); Iowa Legal Aid (Legal Aid); and Interstate Power and Light Company (IPL). An oral presentation was held on April 8, 2003, and the Iowa Community Action Association (ICAA) appeared and filed written comments. The Board's order, which contains a summary of the comments and the Board's analysis, is available on the Board's Web site at www.state.ia.us/iub.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, and 476.20.

These amendments will become effective September 10, 2003.

The following amendments are adopted.

ITEM 1. Amend subparagraph **19.4(15)"h"(3)** as follows:

(3) The summary of the rights and remedies must be approved by the board. Any utility providing gas service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board an original and six copies of its proposed form for approval. *A utility billing a combination customer for both gas and electric service may modify the standard form to replace each use of the word "gas" with the words "gas and electricity" in all instances.*

~~CUSTOMER RIGHTS AND REMEDIES~~
~~TO AVOID DISCONNECTION~~

~~The following is a summary of your rights and remedies under the rules of the Utilities Division of the Iowa Department of Commerce to avoid disconnection of utility service.~~

~~Disconnection can be avoided by paying the past due amount or by making arrangements to pay on or before the date listed on the notice.~~

~~Disconnection for nonpayment may occur only after we have sent a written notice of disconnection by regular mail postmarked at least 12 days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be placed on the door of the home at least one day before service is disconnected.~~

~~Disconnection of your service may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If you make payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect your service that day. If you make payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect your service not later than 11 a.m. the next day. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.~~

~~Delinquent bill. If you are unable to pay a past due bill in full, you will be given an opportunity to enter into a payment agreement to avoid disconnection of service. The agreement will be negotiated to meet your individual needs and you may spread payments for the past due bill over at least 12 months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be told in writing why we refused, and you may continue to pay under your proposed agreement without disconnection of service if you ask the Board (within 10 days after receiving the written refusal) for assistance in working out an agreement with us. (Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877) 565-4450). If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.~~

~~Health. Disconnection for nonpayment will be delayed 30 days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. At our request, a telephone call from the physician or public health official to our office must be followed up by a letter within five days. During the 30-day delay, you must work out a payment agreement. If the physician or health official states that the health problem still exists at the end of the initial 30 days, you may receive an additional 30-day delay.~~

~~Disputed bill. If you disagree with the accuracy of your bill, you may pay the undisputed portion and notify our office of the disagreement. Disconnection will be delayed for up to 45 days from the date the bill was mailed so that the disagreement may be settled. If you file a written complaint with the board (address and telephone number listed previously), disconnection may be further postponed, should the board request the extension.~~

~~Winter energy assistance (November 1 through April 1). You may be eligible for low-income energy assistance or weatherization funds. If you tell us that you may qualify for energy assistance, you will be given 12 days from the date on which the disconnection notice was mailed to apply to the local community action agency. You must apply prior to the disconnection date. If the community action agency certifies you as being eligible for either low-income energy assistance or weatherization assistance within 30 days from the date of your application, then your service cannot be disconnected between November 1 and April 1.~~

~~It is unlikely, however, that energy assistance funds will pay all of your utility bills. It is to your advantage to make a payment arrangement now to avoid disconnection of your service after April 1.~~

~~If you have been certified as eligible for assistance, and you receive a disconnection notice from your gas or electric company, it is up to you to ensure that the utility is notified of your eligibility. Your certification will cover the current November 1 through April 1 period only. For further information on how to apply for assistance and qualifications, contact our business office, the Division of Community Action Agencies of the Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319 (1–515–281–0859), or your community action agency [list of community action agency addresses and telephone numbers for the utility's service territory].~~

AVOIDING SHUTOFF OF GAS SERVICE FOR NONPAYMENT

1. What can I do if I receive a notice from the utility that says my gas will be shut off because I have a past due bill?

a. Pay the bill in full; or

b. Enter into a reasonable payment plan with the utility (see #2 below); or

c. Apply for and become eligible for low-income energy assistance (see #3 below); or

d. Give the utility a written statement from a doctor or public health official stating that shutting off your gas would pose an especial health danger for a person living at the residence (see #4 below); or

e. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #5 below).

2. How do I go about making a reasonable payment plan? (Residential customers only)

a. Contact the utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, the utility may offer you a payment plan that spreads payments evenly over at least 12 months. The plan may be longer depending on your financial situation.

b. If you have not made the payments you promised in a previous payment plan with the utility and still owe money, the utility can refuse to offer you another payment plan.

c. If you do not make the payments you promise, the utility may shut off your utility service on one day's notice unless all the money you owe the utility is paid. If your utility service is shut off, the utility may refuse to offer you any further payment plans.

3. How do I apply for low-income energy assistance? (Residential customers only)

a. Contact the local community action agency in your area (see attached list); or

b. Contact the Division of Community Action Agencies at the Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; telephone (515)281-0859. To prevent disconnection, the utility must be contacted prior to disconnection of your service.

c. To avoid disconnection, you must apply for energy assistance before your service is shut off. Notify your utility that you may be eligible and have applied for energy assistance. Once your service has been disconnected, it will not be reconnected based on approval for energy assistance.

4. What if someone living at the residence has a serious health condition? (Residential customers only)

Contact the utility if you believe this is the case. Contact your doctor or a public health official and ask the doctor or health official to contact the utility and state that shutting off your utility service would pose an especial health danger for a person living at your residence. The doctor or public health official must provide a written statement to the utility office within 5 days of when your doctor or public health official notifies the utility of the health condition; otherwise, your utility service may be shut off. If the utility receives this written statement, your service will not be shut off for 30 days. This 30-day delay is to allow you time to arrange payment of your utility bill or find other living arrangements. After 30 days, your service may be shut off if payment arrangements have not been made.

5. What should I do if I believe my bill is not correct?

You may dispute your utility bill. You must tell the utility that you dispute the bill. You must pay the part of the bill you think is correct. If you do this, the utility will not shut off your service for 45 days from the date the bill was mailed while you and the utility work out the dispute over the part of the bill you think is incorrect. You may ask the Iowa Utilities Board for assistance in resolving the dispute. (See #9 below.)

6. When can the utility shut off my utility service because I have not paid my bill?

a. Your utility can shut off service between the hours of 6 a.m. and 2 p.m., Monday through Friday.

b. The utility will not shut off your service on nights, weekends, or holidays for nonpayment of a bill.

c. The utility will not shut off your service if you enter into a reasonable payment plan to pay the overdue amount (see #2 above).

d. The utility will not shut off your service if the temperature is forecasted to be colder than 20 degrees Fahrenheit during the following 24-hour period, including the day your service is scheduled to be shut off.

e. If you have qualified for low-income energy assistance, the utility cannot shut off your service between November 1 and April 1. However, you will still owe the utility for the service used during this time.

f. The utility will not shut off your service if you have notified the utility that you dispute a portion of your bill and you pay the part of the bill that you agree is correct.

7. How will I be told the utility is going to shut off my gas?

a. You must be given a written notice at least 12 days before the utility service can be shut off for nonpayment. This notice will include the reason for shutting off your service.

b. If you have not made payments required by an agreed-upon payment plan, your service may be disconnected with only one day's notice.

c. The utility must also try to reach you by telephone or in person before it shuts off your service. Between November 1 and April 1, if the utility cannot reach you by telephone or in person, the utility will put a written notice on the door of your residence to tell you that your utility service will be shut off.

8. If service is shut off, when will it be turned back on?

a. The utility will turn your service back on if you pay the whole amount you owe or agree to a reasonable payment plan (see #2 above).

b. If you make your payment during regular business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after regular business hours, the utility must make a reasonable effort to turn your service back on that day. If service cannot reasonably be turned on that same day, the utility must do it by 11 a.m. the next day.

c. The utility may charge you a fee to turn your service back on. Those fees may be higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

UTILITIES DIVISION[199](cont'd)

9. Is there any other help available besides my utility?

If the utility has not been able to help you with your problem, you may contact the Iowa Utilities Board toll-free at 1-877-565-4450. You may also write the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069, or by E-mail at iubcustomer@iub.state.ia.us. Low-income customers may also be eligible for free legal assistance from Iowa Legal Aid, and may contact Legal Aid at 1-800-532-1275.

ITEM 2. Amend subparagraph **20.4(15)"h"(3)** as follows:

(3) The summary of the rights and remedies must be approved by the board. Any utility providing electric service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board an original and six copies of its proposed form for approval. *A utility billing a combination customer for both gas and electric service may modify the standard form to replace each use of the word "electric" with the words "gas and electricity" in all instances.*

~~CUSTOMER RIGHTS AND REMEDIES~~
~~TO AVOID DISCONNECTION~~

~~The following is a summary of your rights and remedies under the rules of the Utilities Division of the Iowa Department of Commerce to avoid disconnection of utility service.~~

~~Disconnection can be avoided by paying the past due amount or by making arrangements to pay on or before the date listed on the notice.~~

~~Disconnection for nonpayment may occur only after we have sent a written notice of disconnection by regular mail postmarked at least 12 days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be placed on the door of the home at least one day before service is disconnected.~~

~~Disconnection of your service may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If you make payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect your service that day. If you make payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect your service not later than 11 a.m. the next day. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.~~

~~Delinquent bill. If you are unable to pay a past due bill in full, you will be given an opportunity to enter into a payment agreement to avoid disconnection of service. The agreement will be negotiated to meet your individual needs and you may spread payments for the past due bill over at least twelve months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be told in writing why we refused, and you may continue to pay under your proposed agreement without disconnection of service if you ask the Board (within ten days after receiving the written refusal) for assistance in working out an agreement with us. (Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450). If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.~~

~~Health. Disconnection for nonpayment will be delayed thirty days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. At our request, a telephone call from the physician or public health official to our office must be followed up by a letter within five days. During the thirty-day delay, you must work out a payment agreement. If the physician or health official states that the health problem still exists at the end of the initial thirty days, you may receive an additional thirty-day delay.~~

~~Disputed bill. If you disagree with the accuracy of your bill, you may pay the undisputed portion and notify our office of the disagreement. Disconnection will be delayed for up to forty-five days from the date the bill was mailed so that the disagreement may be settled. If you file a written complaint with the Board (address and telephone number listed previously), disconnection may be further postponed, should the Board request the extension.~~

~~Winter energy assistance (November 1 through April 1). You may be eligible for low-income energy assistance or weatherization funds. If you tell us that you may qualify for energy assistance, you will be given twelve days from the date on which the disconnection notice was mailed to apply to the local community action agency. You must apply for assistance prior to the disconnection date. If the community action agency certifies you as being eligible for either low-income energy assistance or weatherization assistance within thirty days from the date of your application, then your service cannot be disconnected between November 1 and April 1.~~

~~It is unlikely, however, that energy assistance funds will pay all of your utility bills. It is to your advantage to make a payment arrangement now to avoid disconnection of your service after April 1.~~

~~If you have been certified as eligible for assistance, and you receive a disconnection notice from your gas or electric company, it is up to you to ensure that the utility is notified of your eligibility. Your certification will cover the current November 1 through April 1 period only. For further information on how to apply for assistance and qualifications, contact our business office, the Division of Community Action Agencies of the Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319 (1–515–281–0859), or your community action agency [list of community action agency addresses and telephone numbers for the utility's service territory].~~

AVOIDING SHUTOFF OF ELECTRIC SERVICE FOR NONPAYMENT

1. What can I do if I receive a notice from the utility that says my service will be shut off because I have a past due bill?

a. Pay the bill in full; or

b. Enter into a reasonable payment plan with the utility (see #2 below); or

c. Apply for and become eligible for low-income energy assistance (see #3 below); or

d. Give the utility a written statement from a doctor or public health official stating that shutting off your electric service would pose an especial health danger for a person living at the residence (see #4 below); or

e. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #5 below).

2. How do I go about making a reasonable payment plan? (Residential customers only)

a. Contact the utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, the utility may offer you a payment plan that spreads payments evenly over at least 12 months. The plan may be longer depending on your financial situation.

b. If you have not made the payments you promised in a previous payment plan with the utility and still owe money, the utility can refuse to offer you another payment plan.

c. If you do not make the payments you promise, the utility may shut off your utility service on one day's notice unless all the money you owe the utility is paid. If your utility service is shut off, the utility may refuse to offer you any further payment plans.

3. How do I apply for low-income energy assistance? (Residential customers only)

a. Contact the local community action agency in your area (see attached list); or

b. Contact the Division of Community Action Agencies at the Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; telephone (515)281-0859. To prevent disconnection, the utility must be contacted prior to disconnection of your service.

c. To avoid disconnection, you must apply for energy assistance before your service is shut off. Notify your utility that you may be eligible and have applied for energy assistance. Once your service has been disconnected, it will not be reconnected based on approval of energy assistance.

4. What if someone living at the residence has a serious health condition? (Residential customers only)

Contact the utility if you believe this is the case. Contact your doctor or a public health official and ask the doctor or health official to contact the utility and state that shutting off your utility service would pose an especial health danger for a person living at your residence. The doctor or public health official must provide a written statement to the utility office within 5 days of when your doctor or public health official notifies the utility of the health condition; otherwise, your utility service may be shut off. If the utility receives this written statement, your service will not be shut off for 30 days. This 30-day delay is to allow you time to arrange payment of your utility bill or find other living arrangements. After 30 days, your service may be shut off if payment arrangements have not been made.

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d. The utility will not shut off your service if the temperature is forecasted to be colder than 20 degrees Fahrenheit during the following 24-hour period, including the day your service is scheduled to be shut off.

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f. The utility will not shut off your service if you have notified the utility that you dispute a portion of your bill and you pay the part of the bill that you agree is correct.

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b. If you have not made payments required by an agreed-upon payment plan, your service may be disconnected with only one day's notice.

c. The utility must also try to reach you by telephone or in person before it shuts off your service. Between November 1 and April 1, if the utility cannot reach you by telephone or in person, the utility will put a written notice on the door of your residence to tell you that your utility service will be shut off.

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b. If you make your payment during regular business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after regular business hours, the utility must make a reasonable effort to turn your service back on that day. If service cannot reasonably be turned on that same day, the utility must do it by 11 a.m. the next day.

c. The utility may charge you a fee to turn your service back on. Those fees may be higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

UTILITIES DIVISION[199](cont'd)

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[Filed 7/18/03, effective 9/10/03]
[Published 8/6/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/6/03.

ARC 2671B

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby amends Chapter 24, "Claims and Benefits," Iowa Administrative Code.

The amendments to this chapter make corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 8.

Notice of Intended Action was published in the June 11, 2003, Iowa Administrative Bulletin as **ARC 2518B**. One change from the Notice has been made. Item 15 has been deleted.

These amendments will become effective on September 10, 2003.

These amendments are intended to implement Iowa Code sections 96.3, 96.4(1), 96.4(2), 96.4(3), 96.5, 96.6, 96.19(6)"a," 96.19(38), and 96.29.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 24] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2518B**, IAB 6/11/03.

[Filed 7/18/03, effective 9/10/03]
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[For replacement pages for IAC, see IAC Supplement 8/6/03.]

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of Administrative Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

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